(26,093)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 626.

FORT SMITH & WESTERN RAILROAD COMPANY AND SUPERIOR SAVINGS & TRUST COMPANY, TRUSTEE, APPELLANTS,

vs.

ARTHUR L. MILLS, RECEIVER OF THE FORT SMITH & WESTERN RAILROAD COMPANY, AND J. VIRGIL BOURLAND, U. S. DISTRICT ATTORNEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

INDEX.

	Original.	Print
Citation, with waiver of service	1	1
Caption	3	2
Petition for injunction, &c.	4	2
Exhibit A—Statement of income, &c.	14	8
B—Act to establish eight-hour day, &c.	15	8
C—Agreement between Ft. Smith & Western R. R. Co. and Brotherhood of Locomotive Engineers, effective August 1, 1916	16	10
D—Agreement between Ft. Smith & Western R. R. Co. and Order of Railway Conductors of America, effective August 1, 1916	17	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 18, 1917.

	Original.	Print
Exhibit E—Agreement between Ft. Smith & Western R. R. Co. and Brotherhood of Locomotive Firemen and Enginemen, effective August 1, 1916....	18	32
F—Agreement between Ft. Smith & Western R. R. Co. and Brotherhood of Railroad Trainmen, effective August 1, 1916.....	19	43
Entry of appearance of receiver.....	20	56
Motion to dismiss.....	21	57
Amended motion to dismiss.....	24	59
Decree	26	60
Petition for appeal.....	27	61
Assignment of errors.....	31	63
Order allowing appeal.....	33	65
Bond on appeal.....	35	66
Precipe for transcript.....	38	68
Memorandum opinion	39	69
Certificate to transcript.....	40	69

1 In the Supreme Court of the United States.

THE FORT SMITH & WESTERN RAILROAD COMPANY and SUPERIOR SAVINGS & TRUST COMPANY, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Citation.

United States of America to Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company and J. Virgil Bourland, and their Attorneys, Greeting:

You and each of you are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, District of Columbia, within sixty (60) days from and after the date of the service of this citation, pursuant to an appeal filed in the clerk's office of the said United States Supreme Court, being an appeal from a judgment and decree against the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, from the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in which cause, being numbered 283 Equity, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, as Trustee, were plaintiffs and Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States District Attorney were defendants, to show cause, if any there be, why the judgment rendered against the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, dismissing the bill of complaint in said cause should not be corrected, and why speedy justice should not be done to the Fort Smith & Western Railroad Company and to the Superior Savings & Trust Company, Trustee.

2 Witness the Honorable Frank A. Youmans, Judge of the United States District Court for the Western District of Arkansas, Fort Smith Division. This 6th day of August, 1917.

FRANK A. YOUMANS, *Judge.*

Waiver of Service of Citation.

Come the Defendants, Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States

District Attorney, and waive the service of the above and foregoing citation this 6 day of August, 1917.

HARRY P. WARNER,
Attorney for Arthur L. Mills.
J. V. BOURLAND,
Attorney for J. Virgil Bourland.

Filed in office of Clerk U. S. District Court, August 6, 1917. Wm. S. Wellshear, Clerk.

3 No. 283. In Equity.

THE FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee, Plaintiffs,

versus

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas, Defendants.

Record of Proceedings in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in the above entitled cause, begun July 14, 1917, and proceeding to final decree August 1, 1917, at the June Term, 1917, of said court, wherein pleadings were filed and proceedings had as hereinafter set out, viz:

4 *Petition.*

(Filed in U. S. District Court July 14, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas, Defendants.

Petition for Injunction and Equitable Relief.

The plaintiffs, The Fort Smith & Western Railroad Company and The Superior Savings & Trust Company, as Trustee, uniting herein for convenience, complaining of Arthur L. Mills, as Receiver, and J. Virgil Bourland, United States District Attorney for the Western District of Arkansas, say:

1. Plaintiff, The Fort Smith & Western Railroad Company is a corporation duly organized and existing under the laws of the State of Arkansas owning a railroad either in its own right or under leases controlled by it, extending from Fort Smith, Arkansas, to Guthrie, Oklahoma, and to Oklahoma City, Oklahoma, which is capable of and is used in the transportation of persons and property in inter-

state commerce, and The Superior Savings & Trust Company is a corpora- incorporated under the laws of the State of Ohio.

Defendant, J. Virgil Bourland is the duly appointed, qualified and acting District Attorney of the United States, for the Western District of Arkansas, pursuant to appointment by the President and confirmation by the Senate of the United States, as provided by law, and as such officer of the United States is charged with the prosecution of violations of the Act of Congress, including the Act of Congress hereinafter referred to.

5 Defendant, Arthur L. Mills, is the duly appointed, qualified and acting Receiver of all the property, rights and franchises of the Fort Smith & Western Railroad Company, having been appointed as such receiver on the 9th day of October, A. D. 1915, by the United States District Court, for the Western District of Arkansas, in a cause therein pending entitled The Superior Savings & Trust Company, complainant, vs. The Fort Smith & Western Railroad Company, in Equity, No. 254, and said Receiver on or about said date took possession of the property, rights and franchises of said railroad company and has ever since that date, and now is engaged as said receiver in the maintenance and operation of said property in interstate commerce.

2. The amount in controversy in this action, which is a civil action, exceeds, exclusive of interest and costs, the sum of Five Thousand Dollars ($5,000.00) and is a controversy arising under the Constitution of the United States, in this, to-wit: Plaintiffs seek relief from the enforcement by the defendants of a certain Act of Congress passed September 2, 1916, hereinafter referred to, which violates the Fifth Amendment of the Constitution of the United States in that,

(1.) It deprives plaintiffs of liberty and property without due process of law; and,

(2.) The enforcement of said Act of Congress will confiscate the property of the plaintiffs for public uses without compensation.

3. Plaintiffs say that on or about said April 1, 1904, the plaintiff, The Fort Smith & Western Railroad Company for valuable consideration, executed, acknowledged and delivered and filed, all in conformity with law, its mortgage deed wherein and whereby it conveyed to The Mercantile Trust Company of New York, all its

6 property and franchises, as well the property then owned as any property which it might thereafter acquire, together with the income thereof, all as security for the payment of the principal and interest of an issue of seven thousand five hundred (7,500) first mortgage bonds of the par value of One Thousand Dollars ($1,000.00) each, due by their terms on April 1st, 1954, bearing interest at the rate of four per cent. (4%) per annum, payable semi-annually on the First days of April and October of each year.

That pursuant to the terms of said mortgage there was duly issued, certified and disposed of seven thousand (7,000) of said bonds, of the aggregate par value of Seven Million Dollars ($7,000,000) of which six thousand two hundred and forty (6,240) of said bonds were sold outright to bona fide holders for value, and seven hundred and sixty (760) of said bonds were used by the said The Fort Smith

& Western Railroad Company as collateral security for money borrowed for the purchase of equipment and other proper purposes.

That on or about the — day ——, A. D. 19-, the Trustee under said mortgage having resigned, the plaintiff herein, The Superior Savings & Trust Company, was duly elected and became such trustee under said mortgage in succession to said Mercantile Trust Company, with all the powers and duties in said mortgage contained.

That said Fort Smith & Western Railroad Company did not pay interest on said bonds as required by the terms thereof, but has been in default thereof since the first day of October, 1907, and said The Superior Savings & Trust Company on or about 9th day of October, A. D. 1915, because of said default filed in the United States District Court, for the Western District of Arkansas, its petition for the foreclosure of said mortgage and for the appointment of a receiver, wherein defendant, said Arthur L. Mills, became receiver as hereinbefore set forth.

7 Plaintiffs further say that there is due upon the bonds secured by said mortgage and unpaid, upwards of Nine Million Dollars ($9,000,000), and that the receiver during the operation of said property has incurred obligations and issued receiver's certificates therefor, part of which have been used for the acquisition of equipment for the operation of said property, and part of which have been used for operating expenses and taxes in the aggregate amount of upwards of Three Hundred and Twenty-five Thousand Dollars ($325,000).

That there has been by the said Fort Smith & Western Railroad Company, and by its said receiver invested in the said railroad, and the equipment thereof, an aggregate amount, including interest accrued and unpaid on said bonds approximately Nine Million Dollars ($9,000,000) and the physical property in the possession of said receiver is of a value much in excess of Seven Million Dollars ($7,000,000) and the owners of said property should justly earn a fair and reasonable return on said valuation, to-wit: at least six per cent. (6%) or a minimum of Four Hundred Twenty Thousand Dollars ($420,000) per year over and above operating expenses, taxes and rentals. No dividends have ever been paid upon the capital stock of the Company and no interest upon the bonds of the Company above described since October 1, 1907.

4. Plaintiffs further say that both prior to and during said receivership the business of the Fort Smith & Western Railroad Company was conducted honestly and with the utmost care, skill and economy, and that no excessive or unreasonable salaries were, or are, paid to any officers or employes; that public necessity called for the building of said railroad in order that the people living and doing business in Fort Smith, Arkansas, and territory tributary thereto might have direct railroad connections westwardly across the State of Oklahoma, with the people living and doing business

8 in Guthrie, Oklahoma, and Oklahoma City, Oklahoma, and said railroad serves a large number of villages and towns, some of which are solely dependent for transportation on said railroad intermediate between the termini mentioned and said railroad

passes through rich and valuable coal fields located in said State of Oklahoma about forty (40) miles west of Fort Smith, Arkansas, the output of which is dependent solely on said railroad for transportation to market; that owing to the provisions of the Constitution of the State of Oklahoma prescribing two (2) cents per mile for passenger rates and the competitive conditions prevailing generally with other railroads upon many of the commodities handled by said railroad and owing to the fact that a large part of the lands containing coal heretofore referred to is still held by the Choctaw and Chickasaw Nations of Indians, upon which no coal operations can be carried forward, the income of said railroad has been, still is, and will remain for some years to come, very small, and cannot be increased except as there shall be hereafter an increase in the amount and volume of said business through the development and growth of the country tributary to this railroad; that the gross and net earnings from the operation of said railroad for the last ten (10) fiscal years ending June 30th of each year and for the eleven (11) months of the present fiscal year ending May 31st, 1917, is correctly shown and set forth in Exhibit "*a*" hereto attached and which is hereby made a part hereof, and that any diminution of said net income would seriously add to the burdens of the operation of said property, would be unjust and further reduce the meagre earnings of said property, which are now many times less than they should be in order to afford a fair return upon the value of said property and the cost thereof.

5. Plaintiffs say that on or about the 2nd day of September, 1916, the Congress of the United States passed a certain Act, which was duly approved by the President, entitled "An Act to establish
9 an Eight Hour Day for Employes of Carriers engaged in Interstate and Foreign Commerce," and for other purposes, a true copy of which Act is hereto attached as "Exhibit B" and made a part of this petition.

6. Plaintiffs further say that on or about the 30th day of July, A. D. 1916, all the employes engaged in the operation of trains for the transportation of persons and property in Interstate Commerce on said Fort Smith & Western Railroad, to-wit: the engineers, conductors, firemen and trainmen, through their proper agents and representatives, entered into contracts with the said Receiver, Arthur L. Mills, wherein and whereby they agreed with said Receiver to perform service for said Receiver in the operation of such trains, coming within the duties of their respective positions for the period of one (1) year beginning August 1, 1916, which contracts as originally drafted were printed and as so printed are hereto attached as Exhibits "C," "D," "E" and "F." Said exhibits truly express the contracts aforesaid, except that they were amended and supplemented by agreements made on or about the same date, wherein it was provided that the schedules set forth in said exhibits should remain in effect for the full term of one year, subject to modification thereafter on thirty (30) days' notice.

7. Plaintiffs further say that neither said employes nor the organizations to which they belong, prior to, at the time of, nor since

the passage of said Act of Congress have made demands upon the said receiver contrary to said contracts, nor have they left, nor do they propose to leave the employ of said receiver, nor to strike, or to violate said contracts, but on the contrary the said employes have remained and continue now in the employ of the Receiver and propose to and desire to carry out said contracts according to the terms thereof; that there has been since the date of said contracts and is now no dispute between said receiver and his said employes as to wages or as to hours or character of service, and no disagreement in respect to the same; that said employes ever since the making of said contracts have been and now are engaged in the proper and peaceful performance of their duties under said contracts and have been operating the trains of the Fort Smith & Western Railroad in Interstate Commerce and giving to the public due and proper and adequate service, and there has been no complaint in respect to the same, and the public have not been in any manner discommoded, nor has the transportation of interstate commerce been interferred with in any respect whatsoever, nor is there any disposition or desire on the part of said employes to leave the service of said receiver, or to in any manner inconvenience or interfere with the transportation of passengers or freight in interstate commerce, but on the contrary the most harmonious relations exist between said receiver and his said employes, who have been ever since the date of said contracts paid in accordance with said contracts and said employes are anxious to abide by and in all respects perform the terms of their said contracts.

10

8. Plaintiffs further say that recently the said defendant J. Virgil Bourland, as United States District Attorney, under instructions from the Attorney General of the United States, as plaintiffs are advised, has made a demand upon the said receiver, the said Arthur L. Mills, that he violate his said contracts with said employes and that he substitute for the hours of service and wages prescribed by the said contracts aforesaid, the hours of service and wages prescribed by said Act of Congress, and has, as plaintiffs are advised and believe, threatened said receiver that unless he comply with said demand that he will proceed against said Arthur L. Mills to prosecute him as provided in the said Act of Congress, and that said Receiver has been by reason of the threats aforesaid, intimidated, and will unless restrained by this court, violate said contracts, and out of the moneys in his hands received, or to be received by him as such receiver, from the operation of the said railroad in his care and the income thereof, or from money borrowed upon receiver's certificates, which will be made a lien ahead of said mortgage, all of which are covered by said mortgage, pay to said employes the wages prescribed by said Act of Congress which are much in excess of the wages earned and owing to said employes computed in the manner prescribed by their contracts, to-wit: approximately One Thousand Dollars ($1,000.00) per month.

11

9. Plaintiffs respectfully submit that Congress in the passage of said law was dealing with an emergency existing on many of the large railroads in the United States whereby through inability to

agree upon hours and character of service and wages, great danger existed of interference with interstate commerce as carried on on such railroads, and that Congress did not and could not have intended that said law should be applicable to any railroad where in fact no such emergency existed, nor to any case where no dispute or controversy existed between the railroad and its employes, and plaintiffs aver and charge that if said Act of Congress shall be construed to apply to such situation as exists on the Fort Smith & Western Railroad, and as is contended by the defendant Bourland, that it constitutes an unwarranted, unnecessary, and unconstitutional interference with the business of said railroad and deprives the said receiver and the said employes of the receiver of the liberty of contract, and impairs the obligations of contracts lawfully made.

Plaintiffs further charge that the disbursement of said sum of One Thousand Dollars ($1,000.00) per month proposed to be made by said receiver to said employes covering the period of time from and after the 1st day of January, 1917, contrary to the express terms of the contracts aforesaid, because of the additional burdens placed upon said receiver deprives the plaintiffs of property, and property rights, and operates to confiscate the property of the plaintiffs contrary to the Fifth Amendment of the Constitution of the United States.

12 Wherefore, and by reason of the premises, plaintiffs pray that the said defendant, J. Virgil Bourland, as United States Attorney, be enjoined from taking any steps whatsoever to interfere with the operation of said railroad, or to enforce the said Act of Congress, and the said defendant, Arthur L. Mills, be enjoined from making any payment whatsoever to the employes of the railroad in excess of the said contracts in this petition described; and that upon final hearing hereof, the said Act of Congress be held to be confiscatory and wanting in due process of law, and void as to The Fort Smith & Western Railroad Company, and its receiver, engaged in the operation of the railroad of said Company, and that a temporary restraining order be issued by this Court restraining the said defendants in the manner above stated, until the final hearing of this case upon the merits, and plaintiffs pray for all other proper equitable relief.

THE SUPERIOR SAVINGS & TRUST COMPANY AND
THE FORT SMITH & WESTERN RAILROAD COMPANY.
By HOYT, DUSTIN, KELLEY, McKEEHAN & ANDREWS,
Its Attorneys.
READ & McDONOUGH,
Solicitors for Plaintiffs.

13 THE FORT SMITH & WESTERN RAILROAD COMPANY et al., Plaintiffs,

vs.

ARTHUR L. MILLS, Receiver, et al., Defendants.

STATE OF OHIO,
Cuyahoga County, ss:

J. J. Sullivan and A. C. Dustin, now come and being first duly sworn, depose and say: J. J. Sullivan that he is the President of The Superior Savings and Trust Company, and A. C. Dustin that he is the President of the Fort Smith and Western Railroad Company, plaintiffs in the foregoing action; that they have read the foregoing petition and that the facts therein are true, except as to such facts as are stated on information and belief, and as to those facts, affiants believe them to be true.

J. J. SULLIVAN.
A. C. DUSTIN.

Sworn to by the said J. J. Sullivan and the said A. C. Dustin, and by them subscribed in my presence this 7th day of July, A. D. 1917.

[NOTARY SEAL.]

R. C. DEAN,
Notary Public.

14 "EXHIBIT A."

	Gross Income.	Net Income.	Deficit.
1907.....	$727,006.80	229,748.99	
1908.....	720,948.54	96,006.02	
1909.....	684,201.16	.....	43,606.77
1910.....	726,790.25	24,744.38	
1911.....	879,495.91	158,775.48	
1912.....	841,401.55	145,005.57	
1913.....	785,142.01	67,540.05	
1914.....	740,414.15	.....	29,867.22
1915.....	671,035.40	17,069.64	
1916.....	733,992.23	.....	45,426.88
11 months.....	1,025,645.49	94,798.96	

15 "EXHIBIT B."

An Act to Establish an Eight-hour Day for Employes of Carriers Engaged in Interstate and Foreign Commerce, and for Other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That beginning January first, nineteen hundred and seventeen, eight hours shall, in

contracts for labor and service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for service of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provisions of the Act of February fourth, eighteen hundred and eighty-seven, entitled "An Act to Regulate Commerce," as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads.

Sec. 2. That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard workday as above defined and the facts and conditions effecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings, to the President and Congress; that each member of the commission created under the provisions of this Act shall receive such compensation as may be fixed by the President. That the sum of $25,000, or so much thereof as may be necessary, be, and hereby is, appropriated, out of any money in the United States Treasury not otherwise appropriated, for the necessary and proper expenses incurred in connection with the work of such commission, including salaries, per diem, traveling expenses of members and employes, and other necessary expenses, the same to be approved by the chairman of said commission and audited by the proper accounting officers of the Treasury.

Sec. 3. That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this act for a standard eight hour workday shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at the rate not less than the pro rata rate for such standard eight-hour workday.

Sec. 4. That any person violating any provision of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 and not more than $1,000, or imprisoned not to exceed one year, or both.

16 EXHIBIT "C."

Agreement Between Fort Smith & Western R. R., Arthur L. Mills, Receiver, and Brotherhood of Locomotive Engineers, Effective August 1, 1916.

16¹ "C."

Agreement Between Fort Smith & Western Railroad, Arthur L. Mills, Receiver, and Brotherhood of Locomotive Engineers, Governing Wages and Working Conditions of All Engineers Employed by said Railroad, Effective August 1, 1916.

Article 1.

Passenger Service.

Engineers in passenger service will be paid as follows:

Section 1. $4.40 per hundred miles, over one hundred miles, pro rata.

Sec. 2. Overtime per hour 44c. Road overtime will be computed on basis of fifteen miles per hour, and paid pro rata at mileage rates on basis of ten miles for each hour earned.

Sec. 3. On runs requiring two or more trips on same day, actual mileage will be allowed with minimum of one hundred miles for the day, and when relieved from duty at terminal between such trips, overtime will be computed for each trip separately.

One hundred miles or less will constitute a day.

Article 2.

Initial Terminal Delay.

When passenger engineers are delayed within the terminal as much as one hour beyond the time set that they are ordered to report at their engines, they will be paid one hour overtime, at overtime rates; one hour and thirty minutes constitutes two hours, etc. If road overtime is made on same trip initial overtime will be deducted.

Passenger engineers initial terminal delay stops when train leaves initial station.

Article 3.

Final Terminal Delay.

When passenger engineers are delayed thirty minutes or more after arriving at terminal station, they will be paid at overtime rates one mile for each six minutes so delayed. Their time to start when

train stops at terminal station and end when engineer has inspected his engine and reported such work, and relieved from all duty.

Article 4.

Freight Cars in Passenger Trains.

When freight cars are handled on passenger trains, engineers will receive one hour overtime, excepting when required to switch out or spot cars, two hours will be allowed. Passenger engineers required to handle freight cars in switching out passenger equipment will be allowed one hour overtime for such work.

These allowances to be arbitrary independent of other time earned.

Examples.

No. 1. If No. 4 handles a car loaded or partly loaded with any kind of animals and other show paraphernalia, and no part of the car used for the purpose of carrying passengers, except those that are in charge of the contents of the car, this is to be considered as handling freight cars in passenger trains.

No. 2. If No. 4 handles a car partly loaded with animals or show paraphernalia, and the other part used for the purpose of
16 carrying passengers connected with the show, this to be considered passenger equipment, unless passenger engineer is required to spot car.

Article 5.

Turning Engine or Train or Switching Train.

Passenger engineers required to switch their train or turn their engine or any part of their train before their day's work begins, or after it is completed, will be allowed one hour overtime for such service.

Article 6.

Local and Mixed Service.

Engineers in local freight and mixed train service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, 5.35 cents per mile; overtime 53½ cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, 5.69 cents per mile; over time 56 cents per hour.

Article 7.

Through Freight Service.

Engineers in through freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, 5 cents per mile; overtime 50 cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, 5.25 per mile; overtime 52½ cents per hour.

Article 8.

Overtime.

Engineers in through freight, local and mixed train service: One hundred miles or less, ten hours or less, constitutes a day; road overtime will be allowed on basis of ten miles per hour. On runs of less than one hundred miles, road overtime and final delay at terminal will be paid after ten hours service.

Article 9.

Initial Terminal Delay.

When freight engineers are delayed within the terminal as much as one hour beyond the time set that they are ordered to report at their engines, they will be paid one hour overtime, at over time rates; one hour and thirty minutes constitute two hours, etc. If road overtime is made on same trip, initial overtime will be deducted.

Freight engineers initial terminal delay stops when train leaves initial yards.

Article 10.

Final Terminal Delay.

When freight engineers (not including work train or switch engineers), are delayed thirty minutes or more after arriving at their terminals, they will be paid at the overtime rates; thirty minutes to constitute the first hour, one hour and thirty minutes two hours, etc. Their time to start when they arrive at the switch leading from main line into yard and shall end when engineer has inspected his engine and reported such work and relieved from all duty.

On runs less than one hundred miles, payment for final delays, except passenger engineers, will not be made until after ten hours service.

Article 11.

More Than One Class of Service in One Trip.

When engineers in any class of service perform more than one class of service in the trip, they shall be paid the highest rate of pay for the class of service performed on the trip.

Engineers in through freight or work train service required to load or unload stock, or to do station switching, will be paid local pay for the trip.

16½

Article 12.

Through Freight, Setting Out, Picking Up and Weighing Cars.

Engineers in through freight service delayed at any one station thirty minutes or more, picking up or setting out, or weighing cars, will be paid the actual time consumed in doing this work in excess of all other mileage made. Under thirty minutes no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for local freight service for the same trip, the latter will apply.

This rule does not in any way conflict with the Engineers' schedule governing two classes of service performed in one trip.

Article 13.

Work Train Service.

Engineers performing work train service will be paid as follows: $4.50 per hundred miles or less, ten hours or less constitutes a day's work and all over ten hours to be paid at overtime rates, 45 cents per hour.

Article 14.

Initial and Final Terminal Delay.

No initial overtime will be allowed work train and switch engineers. Their time to start at the time they are ordered to report at their engine.

When work train and switch engineers are used beyond the ten hours' service (not including the meal hour) they will be paid at overtime rates on the minute basis; less than five minutes not to be counted. Their time to end when relieved from all duty.

Article 15.

Switch Engine Service.

Engineers performing switch engine service will be paid as follows: Fort Smith engine, $4.00 per day; at all other points, switch en-

gine, $4.25 per day; ten hours or less constitutes a day. Over ten hours will be counted overtime pro rata at 40c per hour at Fort Smith and 42½ cents per hour at all other points.

Article 16.

Meal Hour on Switch Engine.

Switch engineers will be allowed one hour for dinner between hours of 11:30 a. m. and 1 p. m., and 11:30 p. m. and 1 a. m. This hour not to be included in the ten hours' service. If not allowed one full hour within the given time, they will be paid for the hour in addition to any other time allowed.

Article 17.

Switch Engines Beyond Yard Limits.

When switch engineers are required to make movement beyond yard limit board, or from one station to another, in either case it will be understood that the rules governing service performed will apply. This rule does not apply between McCurtain and Panther.

General Regulations.

Article 18.

Computing Overtime, Double Pay.

When computing overtime, except where otherwise stated, the first thirty minutes will be counted as one hour, and additional overtime for each succeeding hour will be allowed.

Under no circumstances will the Company pay double time for the same service except where otherwise provided.

Article 19.

Doubling Hills.

When engineers are compelled to double hills they will be allowed ten miles for each double. If road overtime is made on same trip, one hour will be deducted for each double. This Article ap-
16⁴ plies when engineers push other trains over hills or int ta-tions.

Article 20.

Light Mileage.

Engineers running engines light with or without caboose shall be paid for the class of service that causes such mileage.

Article 21.

Deadheading.

Engineers deadheading under Company's orders shall receive one-half pay for the service they represent.

Article 22.

Towed or Deadheaded to Terminal.

Engineers tied up for rest under the law and then towed or deadheaded into the terminal with or without engine, will be paid the same as if they had run the engine to such terminal.

Article 23.

Coaling Up and Watching Engines.

Engineers required to coal up or watch engines, will be paid per hour at overtime rates. This will be arbitrary allowance.

Article 24.

Breaking in Engines.

Engineers breaking in engines will be paid according to through freight rates.

Engineers will perform this service.

Article 25.

Ordered Out and Not Used.

When engineers are ordered out and not used on account of trains annulled or otherwise, they shall receive one-quarter day's pay. If held more than two and one-half hours and less than five hours they shall be paid one-half day's pay.

If more than five hours they shall be paid for one day for such service which they were called.

Article 26.

Attending Court.

Engineers attending court at the request of the Company will be paid the same rate as they would have made had they remained on their run, and if away from home station, will be allowed legitimate expenses. Extra engineers not assigned will receive $5.00 per day and expenses as above.

Engineers attending court will receive their voucher without any unnecessary delay.

Article 27.

Deadheading Engines.

Engineers in charge of deadhead engines will be paid according to through freight rate pay.

Article 28.

Station Switching.

Engineers called to do station switching at any place where there is not a regular assigned switch engine, engineers will be allowed local pay as per Article governing local rates.

Article 29.

Regular Assigned Mileage.

Engineers on regular assigned runs, if for any cause except their own do not reach their terminals or are turned around before reaching terminals, will be allowed their regular assigned mileage.

Article 30.

Piloting.

A pilot, if available, will be furnished on light engines. When foreign trains are detoured over the Fort Smith & Western Railroad, an engineer, if available, will be furnished as a pilot. En-
16½ gineers performing such service will be paid for at the rate of service corresponding to train pilot.

Article 31.

On Duty.

Engineers will be considered on duty until they have inspected their engines and reported such work as is needed. Engineers will be relieved of making pit inspection.

Article 32.

Continuous Time on Turn Around Runs.

On all turn around runs continuous time will apply. If tied up on account of the service law the time the engineer consumes in taking his required rest will be deducted. This rule does not apply to turn around out of Oklahoma City and Sparks.

Article 33.

Tied Up Before Reaching Terminal.

Engineers in regular assigned freight service will not be tied up away from their terminal until the expiration of 15 hours and 30 minutes' service, and if tied up away from terminal their time to start at the expiration of their required rest.

Article 34.

Work Train Tied Up Away and at Home Terminal.

Engineers in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period will begin at midnight following the tie up period.

When work train engineers are tied up at home terminal twenty-four hours, and it is apparent the work train will be idle for a longer period than twenty-four hours, except Sundays or holidays, engineer will be allowed to return to the extra board or to any run his seniority entitled him to. Home Terminal of work train will be considered at Weleetka.

Engineers in Extra or Unassigned Service Held Away from Home Terminal.

Engineers in pool freight and in unassigned service held at other than home terminals, will be paid continuous time for all time so held after the expiration of twenty-two (22) hours from time relieved from previous duty, at the rate per hour paid him for the last service performed. If held fourteen (14) hours after the expiration of the first thirty-two (32) hour period, he will be paid continuous time for the next succeeding ten (10) hours, or until the end of the twenty-four (24) hour period, and similarly for each twenty-four (24) hour period thereafter. Should an engineer be called for duty after pay begins, his time will be computed continuously.

Home terminal for extra and unassigned engineers will be at Fort Smith.

Article 35.

Miscalling of Engineers.

Engineers who are not called for runs that they are entitled to, will receive pay the same as if they were called.

Article 36.

Terminal of Runs.

An engineer is understood to have reached the terminal of a trip on any division when he reaches the division terminal at which en-

gine crews of train are usually changed, or of a train to which the trip is made, and having done so and proceeds further with the same train, or being sent out on another trip or train, he is in either case understood to have begun another trip. This only applies to regular assigned runs.

The terminal of regular assigned runs will begin on the same date the time table takes effect and date runs take effect.

16[6]

Article 37.

Calling.

Engineers will be called at all terminals not more than one hour and thirty minutes before time ordered to report for duty.

Article 38.

Hostlers.

Hostlers will not be allowed to do switching, such as is performed by switch engineers and other irregular or local freight engineers.

Article 39.

Work on Engines and Fines.

When engineers are required to do work on their engines when away from roundhouse points, they will be paid for such work at hourly rates.

Engineers will be relieved of the care of headlights and filling of grease cups where engines are dispatched from points where an engine force is maintained.

No fines will be imposed upon engineers for loss of or breakage of tools, for damage by accident to rolling stock on the road, or for stock killed or injured. Engineers agree to use their best efforts to avoid accidents and damages as far as possible.

Article 40.

Time Slips Not Allowed.

When the engineer's time slips are not allowed, the Chairman of the Engineers' Committee will be notified within ten days from the end of the pay period, and if he is not notified, slips will be allowed as turned in.

Engineers' tie up will be checked from the roundhouse register. They will not be required to get conductor or yardmaster to O. K. their time slips. Time checks will be issued for all amount of shortage of time.

Article 41.

Physical Requirements.

Engineers in the service of this Company where they are examined for color perception, acuteness of vision or hearing, should the indoor test disclose a deficiency of perception, a field test shall be conducted in the following manner:

For vision: With the flags, lamps and signals used in the daily operation of trains, with or without glasses at a distance not to exceed 2,000 feet. For the correct observation of semaphore arms and lights, and of lamp or flag signals.

For hearing: Ability to hear ordinary conversation and air whistle signals under service conditions, the results of which shall determine the standing of the person examined.

The Engineers' Committee will be present when such tests are being made.

Article 42.

Sunday Away From Home.

Engineers assigned to regular runs with Sunday lay-overs away from home terminal, will be notified if required for service Sunday. If no notice is received, may absent themselves until time for their regular run Monday. If notified and not used will be paid a minimum day.

When engineers have to change on the road in order to catch their regular runs on account of trains not running on holidays, it shall be arranged, if possible, to make the change so that the men will be at their home terminal for the holidays. The oldest engineer to have the preference in the changing.

Article 43.

Promotion.

One engineer shall be hired for each two firemen promoted. Should it become necessary to reduce the number of engineers on account of slack business, those who have been promoted from the ranks of firemen will take such position as their seniority as
167 firemen will entitle them to, and will again resume their ranks as engineer in turn when necessary to increase the number of engineers, provided they will take service as such when called upon. Engineers who have been hired will return to service in turn, providing they keep the Master Mechanic advised of their whereabouts and report for duty within fifteen days after having been notified to do so.

Article 44.

Bulletin of Permanent Vacant Runs.

All permanent vacant runs or new runs will be bulletined for a period of five days as soon as made vacant or established. An engineer deprived of his regular run for any cause shall by application to the Master Mechanic take a run within five days if entitled to one, or remain on the extra board list until another run of his choice is open. The bulletins to all runs shall be closed at 3 p. m. on the fifth day.

Engineers absent during the bulletin period will be allowed five days after returning to duty to bid thereon.

Article 45.

Extra Engineers.

Extra engineers will run first in and first out, except when an extra engineer catches an engine or a run he will hold it for a period of fifteen days unless relieved by a regular assigned engineer. This rule does not apply to passenger service.

Regular assigned extra engineers shall have preference to road work over emergency engineers.

Article 46.

Temporary Vacancy in Passenger Service.

Temporary vacancy in passenger service will be filled by the senior regular assigned freight engineer in the terminal at the time the vacancy occurs. The senior regular assigned freight engineer will have right to such vacant runs at any time he becomes available, and makes application for the same. After the run is vacant for thirty days or longer and the run thus made vacant is preferred to other passenger runs by reason of hours, relay or pay, the senior engineer in passenger service making the application will be assigned to said run in preference to the regular run he may then hold.

Article 47.

Temporary Vacancy in Freight Service.

When preferred freight runs have been vacant fifteen days or more senior engineer making application for such vacancy will fill it.

Article 48.

Discipline.

Engineers will not be suspended, given demerit marks or discharged from the service except for good and sufficient cause, and in

case an engineer is suspended pending investigation, he shall be notified, and a decision rendered within five days. If an engineer considers that he is unjustly suspended, he may, within ten days after the receipt of such statement, be given a fair and impartial hearing before a Board of Inquiry, consisting of the Superintendent, Trainmaster, Master Mechanic or the Traveling Engineer. Two or more of the above constitutes such a Board. (Both Mechanical and Transportation Department being represented.) At which hearing he shall have the right to have any other engineers of his own selection, who shall be in the employ of the Company, no other person, than those constituting the Board of Inquiry, and the disinterested engineer will be permitted to question witnesses. In case he is dissatisfied with the decision of the Board of Inquiry, he will have the right of ten days' appeal to the General Officers, who will grant a hearing within ten days, intention being that ten days will be given each ranking officer to whom the appeal is made. If found innocent, he will be
16⁸ paid for the time off. The Committee handling such cases will be permitted to see investigation papers pertaining to same in the Superintendent's or Trainmaster's office.

When an engineer resigns or is discharged, he shall be furnished service letter within ten days of resignation or dismissal.

Article 49.

Engineers' Committee Handling Grievances.

No grievance will be entertained unless presented in writing to the Master Mechanic within ten days after its occurrence by the engineer or engineers' local Committee. Engineers shall have the right to appeal to the next ranking officers, provided such appeal is made in writing within ten days after the Master Mechanic has rendered his decision to the engineer or the Engineers' Local Committee.

No committee, other than that of the Engineers, will handle adjustment matters pertaining to engineers.

Article 50.

No change in the foregoing rates, rules and regulations will be made without thirty days' notice being given to either party.

FORT SMITH & WESTERN RAILROAD,
A. L. MILLS, *Receiver.*
For the Engineers: M. J. MILLER, *Chairman.*

17 EXHIBIT "D."

Agreement Between Fort Smith & Western R. R., Arthur L. Mills, Receiver, and Order of Railway Conductors of America.

Effective August 1, 1915.

17¹ *Agreement Between Fort Smith & Western R. R., Arthur L. Mills, Receiver, and Order of Railway Conductors of America.*

[Union Label.]

Effective August 1, 1916.

17² *Agreement of Wages and Working Conditions Between Fort Smith and Western Railroad, Arthur L. Mills, Receiver, and Order of Railway Conductors of America.*

Article 1.

All trips to be credited to the day on which they begin.

Article 2.

Passenger.

Sec. A—On runs of less than 4,000 miles per month, $135.00.

Runs of 4,000 to 5,000 miles per month, $155.00.

Runs of 5,000 to 6,000 miles per month, $165.00.

Over 6,000 miles per month to be paid in overtime at the rate of $2.75 per 100 miles.

All other overtime to be paid at the rate of 40 cents per hour.

Road overtime to be computed on a basis of 15 miles per hour.

Sec. B—When required to handle freight cars in passenger trains, conductors will be allowed one hour overtime for each cut handled; if more than one destination, one hour will be allowed for each destination.

Conductors will be allowed overtime when required to switch or turn trains, or engines, before leaving or after arrival at terminal, with a minimum of one hour for such service.

When doing wrecking or work train service, at wrecks or wash outs, will be allowed overtime for such time in addition to mileage or days made in regular service.

Sec. C—A white brakeman or flagman will be employed on all passenger trains.

Article 3.

Special Passenger and Excursion Train Service.

Sec. A—Conductors will be paid 3.3 cents per mile, 175 miles or less to constitute a day. In computing overtime in extra passenger

and excursion train service, the trip in each direction will be computed separately, and the time off duty at turn around point will not be used in computing overtime, except when the return trip is made without a full rest period, in which case the mileage both ways will be counted as one trip, and all time at turn around point will be used in computing overtime.

Sec. B—The oldest freight conductor available will be given preference in extra passenger work, and on special passenger, or excursion trains, when regular extra passenger conductor is not available for such service.

Article 4.

Through and Irregular Freight Service.

Sec. A—Conductors in through or irregular freight service will be paid at the rate of $4.20 per hundred miles, one hundred miles or less, ten hours or less, to constitute a day, overtime pro rata.

Road overtime will be allowed on a basis of ten miles per hour, actual minutes to be counted in computing overtime.

Sec. B—Conductors in through freight service delayed at any one station thirty minutes or more, picking up, setting out, or weighing cars, will be paid the actual time consumed in doing this work, in excess of all other mileage or time made; under thirty minutes no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for a local freight service for the same trip, the
17½ latter will apply. This rule does not in any way conflict with clause governing two classes of service performed on one trip.

Sec. C—When conductors perform more than one class of service in one trip, they will be paid the highest rate of pay for the class of service performed on the trip. Conductors in through freight or work train service required to load or unload stock, or to do station switching, such as spotting cars, and such work as is performed by a local freight, will be paid local pay for the trip.

Article 5.

Mixed Trains.

Conductors in charge of mixed trains will be paid at regular local rate of pay.

A mixed train is construed to mean a train regularly handling both freight and revenue passengers, with or without passenger equipment.

A freight train handling dead head passenger equipment will not be considered a mixed train under this article.

Article 6.

Local or Way Freight Trains.

Conductors on all local or way freight trains will be paid $125.25

per calendar working day month, one hundred miles or less, ten hours or less, to constitute a day; overtime pro rata.

When business is heavy on local or way freight trains, the Chairman of Committee will confer with proper official, and if shown that three brakemen are needed they will be placed on trains.

Article 7.

Work Train Service.

Sec. A—Conductors in charge of work trains will be paid at the rate of $4.38 per day, 100 miles or less, ten hours or less, to constitute a day, excess mileage and overtime pro rata.

Work train is construed to mean one handling company material, or engaged in wrecking service. Conductors in work train service will be paid for legal holidays, New Year's Day, Fourth of July, Thanksgiving Day and Christmas Day.

It is not the intention to use work train crews on these days, but in case they are used they will be paid for service performed, in addition to regular work train day.

Sec. B—When conductors of work trains are required to act as foreman, or to take charge of ditchers, they will be paid $30.00 per month additional for such service. The Company reserves the right to select such men as may be considered most capable, from the ranks, for such work. And to send the conductors so selected from one division to another, within the territory of their Superintendent. Conductors so selected will retain their rights on the district to which they belong, and will acquire none on the other districts.

Sec. C—When work trains are required to pick up a train not connected with work train service, or to do switching, at any station, except to pick up cars connected with work train service, will be paid highest rate of pay for service performed, for the day or trip.

Sec. D—Conductors in work train service held at other than home terminals, will be allowed a minimum day at the rate of service last performed, for every twenty-four hours so held. The twenty-four hour period to begin at midnight following the tie up period.

When it is apparent that work train crews will be idle for longer periods than twenty-four hours at the home terminal, except Sunday and holidays, they will be relieved and used in other service.

Home terminal of work trains will be at Weleetka.

Article 8.

Yard Service.

Sec. A—Yard masters will be paid $100.00 per calendar working day month, for day service, and $110.00 per calendar working day month for night service. Overtime pro rata, ten hours or less to constitute a day.

Engine foremen will be paid 38 cents per hour for day
17¹ work, and 39 cents per hour for night work with a minimum of ten hours service per day, Sundays not included.

Sec. B—Conductors will be given preference as yard masters and engine foremen, same as runs on road, according to their seniority, and such vacancies bulletined, and men assigned in same manner as runs on road.

Sec. C—Meal hour for yard men in day service will be from 11:30 a. m. to 1 p. m., and from 11:30 p. m. to 1 a. m. for night service.

Engine-s working a ten hour period beginning at midnight or noon, will have one hour for meals between 5:30 and 7 o'clock.

Article 9.

Terminal Detention.

Sec. A—Initial terminal delay will start from the time the train men are ordered to report for work.

Conductors will report far enough in advance of this time to see that they have all of their supplies but not to exceed thirty minutes.

When conductors are delayed within the terminal as much as one hour beyond the time they are ordered to report for work, they will be paid one hour overtime, at overtime rates. One hour and thirty minutes constitutes two hours, etc.

If road overtime is made on same trip, initial terminal delay will be deducted. Freight initial terminal delays stops when the train leaves initial yards.

Final Terminal Delay.

Sec. B—When conductors are delayed 15 minutes or more after arriving at their terminal, they will be paid at overtime rates on the minute basis. Less than 15 minutes not to be counted. Their time to start when they arrive at the switch leading from the main line into the yard, and will end when relieved from all duty. On runs of less than 100 miles payment for final delay, except on passenger, will not be made until after ten hours' service.

Article 10.

Meals.

Conductors will not be required to go longer than six hours without eating, and will be allowed a reasonable time at a convenient place, despatcher to be notified.

Article 11.

Doubling Hills.

Ten miles will be allowed for each double, unless the double is more than ten miles, in which case actual miles will be allowed. No allowance will be made for doubling when less than ten hours or less than 100 miles have been made, for which ten hours or 100 miles have been allowed.

Article 12.

Overtime.

All overtime will be paid on the minute basis, less than five minutes not to be counted.

Article 13.

Tied Up Between Terminals.

Conductors in regular assigned service will not be tied up away from their terminal until after the expiration of fifteen hours and thirty minutes service, and if tied up away from their terminal their time will start upon the expiration of their required rest.

Article 14.

Called and Not Used.

When a conductor is called and not used for any reason not his own, he will be paid as follows: If held for duty less than five hours and relieved he will receive one-half day at the rate of service called for, and stand first out. If held five hours and relieved he will be paid one day at the rate of service called for and stand last out.

Article 15.

Wrecking.

17⁵ Local or through freight conductors doing wrecking en route will be allowed work train pay for the time so consumed, with a minimum of one hour. In case of road overtime being made for the trip, time in wrecking will be deducted from road overtime, there being no double pay for this service.

Article 16.

Dead Heading.

Conductors dead heading under orders of the company will receive half pay for the class of service they represent.

Article 17.

Attending Court.

Conductors attending court at the request of the company will be paid the same rate as they would have made had they remained on their run, and if away from home will be allowed legitimate expenses.

Extra conductors will be paid at through freight rates of 100 miles per day, and expenses as above.

Conductors attending court will receive their vouchers without unnecessary delay.

Article 18.

Transportation for Goods.

When assignment, change of runs, or change of trains require conductors to move, they will be furnished free transportation for their families, and household goods, in so far as the law will permit.

Article 19.

Rest.

Conductors will not be required to go out when they claim they need rest.

Article 20.

Brakemen Objected To.

When conductors make reasonable objections to brakemen in writing, they will be changed to another crew.

Article 21.

Off of Division.

Conductors run off regular assigned subdivision will stand first out for return to their home terminal, after period of rest is up, in compliance with the hours of service law. Conductors not to be used off their assigned sub-division for more than one trip, successively, except in case of wrecks or wash outs. This not to apply to chain gang crews.

Article 22.

Extra Board.

Sec. A—Crews not assigned to regular runs will run first in first out.

Extra Conductors: The oldest available man in point of service will be entitled to first call, in case an extra conductor lays off, when reporting for duty, will return to the car he had when laid off, providing the car is not being protected by a senior man, or the regular man has not reported for duty.

Sec. B—When business is not sufficient to warrant an extra conductor, he will be permitted to hold a car as brakeman. It being understood that this will not conflict with trainmen's contract.

When a conductor's extra board is maintained, the extra conductor will be permitted to relieve a conductor who holds a car as brakeman, at any terminal.

Sec. C—When an extra or emergency car is put on, for an indefinite period, the oldest extra conductor will be used, and will hold this car as long as it is in service daily except Sunday.

The car being tied up away from terminal will be sufficient notice that the car will work next day. Should the car be run into terminal, and the crew is tied up, the chief despatcher or other officer will notify the conductor of the intention to work next day, otherwise the car will be considered out of service, and the conductor will take his turn on extra board.

17[6] Sec. D—When conductors are displaced by a senior man, or a run is pulled off, conductors will be allowed five days in which to select a run, according to his seniority; if, after five days, no run has been selected, he will return to extra board and await another vacancy before being placed.

Article 23.

Written Instructions.

Instructions to conductors relative to handling of train or movement of cars, will be given in writing.

Article 24.

Hiring Conductors.

At least one conductor will be hired for each two brakemen promoted. In hiring conductors, those already in the service will be given preference.

Article 25.

Assigned Runs.

Conductors assigned to regular runs required to make extra trips, or perform other service, not included in their regular service, or assignment, will be paid in addition to their regular rate, for the extra service at the rate provided for such extra service.

Article 26.

Promotion.

Sec. A—All brakemen promoted, and conductors hired, will be considered extra conductors, and their seniority dates from date first trip was made, when it can be clearly shown that such promotion was regularly made. The promotion will be governed by record, character, merit and service.

Sec. B—Brakemen from other lines, or passenger brakemen, must have had two years' experience as freight brakemen before being eligible to promotion.

Article 27.

Selecting Runs.

Sec. A—A new run put on, two hours or more change in time, ten miles or more change in mileage, ten dollars or more change in salary, change in terminal, or a change in class of service, will be considered a new run, and no runs will be bulletined except under the above conditions, or when a run is vacated.

Sec. B—Runs as above described, will be bulletined for a period of five days, and the oldest conductor bidding on a run will be assigned, and a run so selected will be held by him, until he is displaced by a senior man, the run is pulled off, or there is a vacancy to which he is entitled to, according to his seniority.

Article 28.

Sec. A—Conductors will not be granted leave of absence, for a longer period than ninety days, except in case of sickness, injury, or doing committee work, unless agreed to by Conductors' Committee, and the Superintendent, Chairman of Committee to be notified of all renewals.

Sec. B—Any employee of the railroad company covered by this agreement, entering the service of the Fort Smith & Western or any proposed extention, or the Order of Railway Conductors, and assigned to service connected with the above named road, will retain his rights on his division.

Article 29.

Discipline.

Conductors will not be disciplined without just and sufficient cause.

Discipline may be by dismissal, suspension, demerit marks, or reprimand.

Conductors will not be dismissed or suspended without an investigation, except for intoxication; and further excepting that he may be held out of service pending an investigation.

At the investigation he may be present together with a disinterested employee of his choice. If any conductor thinks his discipline unjust he shall have the right within twenty days to appeal his case by written statement to his Superintendent. In case he is dissatisfied with the decision of the Superintendent he shall have the
17 right to, within twenty days after the receipt of the decision, appeal to the General Manager.

Investigations should be held within ten days from date of receipt of request, and decisions rendered, where practicable, within ten days after the investigation. If a conductor is dismissed or suspended,

and this discipline, upon any of the above appeals is found to be unjust, he shall be returned to service and paid for time lost.

When conductors are given demerit marks, they shall be notified in writing, and shall have the same right to appeal as above. If the marks are found to be given unjustly, they will be removed.

Article 30.

Adjusting Grievances.

The Superintendent will listen to all complaints of committeemen, and provided notice is given of subject of complaint, when an early hearing will be given. No conductor will be discriminated against on account of being a member of any order, or for serving on any grievance committee.

A conductor discharged from the service of the company shall be entitled to a fair and impartial hearing before the board of inquiry, consisting of the officers of the railroad company and a member of his selection. At said hearing he or his representative will have the right to make inquiry of the facts, and in case he is not satisfied with the decision of the officer who issues the order for the discipline, he may, within ten days, make written statement to Superintendent and Chairman, who will promptly arrange for a hearing, at which the conductors will have a representative. The Superintendent may select any officers of the company to act with him as board of inquiry, who will give full hearing of the case and render decision promptly.

No one except the board of inquiry, and disciplined conductor, will be permitted to question the witness. In case he is not satisfied with the decision of the board of inquiry, he will have the right to appeal to the General Manager. In case of an appeal to the General Manager, the Chairman Adjustment Committee will be furnished with a stenographic copy of the proceedings of the board of inquiry.

Any employee may be dismissed without hearing, in case of intoxication while on duty.

In case a conductor is found innocent at any stage of the hearing, he shall be restored to his previous rank and paid for time lost.

Article 31.

This memorandum will govern all Superintendents, Train Masters, and other officers of the Fort Smith & Western Railroad, in the discipline and control of the conductors in the service of said company, and will constitute a letter of introduction in all matters herein stated.

Hereafter, in the employing of conductors, officers of the company are hereby instructed to hire none but sober, reliable, and experienced men when available.

Conductors will be directly responsible to the orders of the Superintendent or Train Master at all times, in all matters pertaining to their duty. No other subordinate official will be permitted to interfere with the discipline or control of these employees.

Article 32.

The articles enumerated herein constitute in their entirety, an agreement between the Fort Smith & Western Railroad, Arthur L. Mills, Receiver, and its conductors, to take effect August 1st, 1916.

No departure from the provisions of this contract will be made by either party, until thirty days' notice has been given and served upon the other.

For the Railroad Company:

A. L. MILLS, *Receiver.*

For the Conductors:

W. E. CROUSE, *Chairman;*
G. H. FURLONG, *Vice Ch'm;*
C. W. SMITH, *Secretary;*
General Committee.

17 *Agreement Covering Oklahoma City and Sparks Turn Around Run.*

Initial Delay.

Conductors delayed one hour from the time *he is* ordered to report for duty at Oklahoma City, or Sparks, will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc.

Final Terminal Delay.

Conductors delayed thirty minutes or more after arriving at the switch leading off the main line at Oklahoma City, or at the depot at Sparks, will be paid one hour overtime, at overtime rates; one hour and thirty minutes to constitute two hours, etc.

Road overtime to be computed on the basis of ten miles per hour. No road overtime will be allowed until after five hours and thirty-six minutes in each direction.

If road overtime is made initial overtime will be deducted.

Rules governing held away from home terminal will apply at Oklahoma City and Sparks; this rule does not apply to day's run is not carded.

Mileage.

The mileage to be 56 miles in each direction, except No. 15 Monday and No. 16 on Saturday, when the mileage will be 100 miles; no overtime until after ten hours' service.

When necessary for these trains to detour, the mileage made while detouring, and overtime rules will apply.

For the Railroad:

A. L. MILLS, *Receiver.*

For the Conductors:

W. E. CROUSE, *Chairman;*
G. H. FURLONG, *Vice Ch'm;*
C. W. SMITH, *Secretary;*
General Committee.

18 EXHIBIT "E."

Agreement Between Fort Smith & Western R. R., Arthur L. Mills, Receiver, and Brotherhood of Locomotive Firemen and Enginemen, Effective August 1, 1916.

18¹ "E."

Agreement Between Fort Smith & Western Railroad, Arthur L. Mills, Receiver, and Brotherhood of Locomotive Firemen and Enginemen, Governing Wages and Working Conditions Affecting All Locomotive Firemen Employed by Said Railroad, Effective August 1, 1916.

Article 1.

Passenger Service.

Section 1. Firemen in passenger service will be paid as follows:

$2.65 per hundred miles or less; overtime 25½ cents per hour. Over one hundred miles, pro rata.

Sec. 2. Road overtime will be computed on basis of fifteen miles per hour, and paid pro rata at mileage rates on basis of ten miles for each hour earned.

Sec. 3. On runs requiring two or more trips on the same day, actual mileage will be allowed, with a minimum of one hundred miles for the day, and when relieved from duty at terminals between such trips, overtime will be computed for each trip separately.

Sec. 4. Passenger firemen delayed within the terminal one hour will be allowed one hour overtime, at overtime rates; one hour and thirty minutes to constitute two hours, etc. The initial overtime to start from the time the fireman is ordered to report at the engine and ends when train leaves initial station.

Sec. 5. When passenger firemen are delayed thirty minutes or more after arriving at terminal station, they will be paid at overtime rates one mile for each six minutes so delayed. Final overtime to start when train reaches terminal station and ends when fireman is released from all duty.

Sec. 6. When freight cars are handled in passenger trains, fireman will receive one hour overtime, excepting when required to switch out or spot cars, two hours will be allowed. Passenger fireman required to handle freight cars in switching out passenger equipment will be allowed one hour overtime for such work.

These allowances to be arbitrary independent of other time earned.

Example No. 1. If No. 4 handles a car loaded or partly loaded with any kind of animals and other show paraphernalia, and no part of the car used for the purpose of carrying passengers, except those that are in charge of the contents of the car, this to be considered as handling freight cars in passenger trains.

Example No. 2. If No. 4 handles a car partly loaded with animals or show paraphernalia, and other part used for the purpose of carrying passengers connected with the show, this to be considered passenger equipment, unless passenger fireman is required to spot car.

Sec. 7. When passenger firemen are required to switch their train or turn their engine or any part of their train before their day's work begins or after it is completed, they will be allowed one hour overtime for such service.

18

Article 2.

Local and Mixed Freight Service.

Section 1. Firemen in local and mixed freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, $3.40 per hundred miles; overtime 34 cents per hour.

On engines weighing 140,00- pounds on drivers and less than 200,000 pounds on drivers, $3.60 per hundred miles; overtime 36 cents per hour.

Sec. 2. One hundred miles or less, ten hours or less, to constitute a day. Road overtime will be allowed on basis of ten miles per hour, on runs less than one hundred miles, except passenger service, road overtime and final terminal delay will be paid aften ten hours service.

Sec. 3. When firemen in freight service are delayed at the initial terminal, one hour, they will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc., the initial terminal delay to start at the time the fireman is ordered to report at the engine and ends when he leaves initial yards.

If road overtime is made on same trip, initial overtime will be deducted.

Sec. 4. When firemen in freight service, not including work train or switch engine firemen, are delayed at the final terminal thirty minutes, he will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc., final terminal delay to start when fireman reaches switch leading from main line into yards, and ends when fireman is released from duty.

Article 3.

Through Freight Service.

Section 1. Firemen in through freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, $3.10 per hundred miles; overtime 31 cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, $3.30 per hundred miles; overtime 33 cents per hour. One hundred miles or less, ten hours or less to con-

stitute a day. Overtime rules in Article 2 apply to firemen in through freight service.

Sec. 2. Firemen in through freight service delayed at any one station thirty minutes or more, picking up or setting out, or weighing cars, will be paid the actual time consumed in doing this work in excess of all other mileaege made. Under thirty minutes no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for local freight service for the same trip, the latter will apply.

This rule does not in any way conflict with the firemen's schedule governing two classes of service performed in one trip.

Article 4.

Work Train Service.

Firemen performing work train service will be paid as follows:

$3.00 per hundred miles or less, ten hours or less to constitute a day's work; overtime pro rata computed on the minute basis, less than five minutes not to be counted.

Article 5.

Switch Engine Service.

Section 1. Firemen performing switch engine service will be paid as follows:

$2.70 per day, ten hours or less to constitute a day. Over ten hours (not including the meal hour) pro rata computed on
183 the minute basis, less than five minutes not to be counted.

Sec. 2. When switch firemen are required to make movements beyond yard limit board, or from one station to another, in either case it is to be understood that the rules governing service performed will apply. The rule does not apply between McCurtain and Panther.

Sec. 3. Switch firemen will be allowed one hour for meals between the hours of 11:30 a. m. and 1:00 p. m., and 11:30 p. m. and 1:00 a. m. This hour not to be included in the ten hours service. If not allowed one full hour within the given time, they will be paid for the hour in addition to any other time allowed.

Sec. 4. No initial or final overtime will be allowed work train and switch firemen. Their time to start at the time they are ordered to report at their engine and to end when relieved from all duty.

Article 6.

Hostlers.

The minimum pay for hostlers will be $2.50 per day of twelve hours or less, overtime pro rata.

Hostlers will be selected from the oldest firemen making application.

Article 7.

Computing Overtime and Double Time.

When computing overtime, except where otherwise stated, the first thirty minutes will be counted as one hour, and additional overtime for each succeeding hour will be allowed.

Under no circumstances will the company pay double time for the same service except where otherwise provided.

Article 8.

Terminal of Runs.

Section 1. A fireman is understood to have reached the terminal of a trip on any division when he reaches the division terminal at which engine crews of trains are usually changed, or of a train to which the trip is made and having done so and proceeds further with the same train, or being sent out on another trip or train, he is in either case understood to have begun another trip.

This applies only to regular assigned runs.

Sec. 2. The terminal of regular assigned runs will begin on the same date the time table takes effect and date run takes effect.

Article 9.

Doubling.

Ten miles will be allowed for each double over hills. When necessary to help other trains over hills or into station, it will be considered a double; if road overtime is made on same trip, one hour will be deducted for each double.

Article 10.

Continuous Time.

Section 1. On all turn around runs continuous time will apply. If tied up on account of the service law the time the fireman consumes in taking his required rest will be deducted. This rule does not apply to turn around out of Oklahoma City or Sparks.

Sec. 2. Firemen on regular assigned runs if for any cause except their own, do not reach their terminal or are turned around before reaching terminal, will be allowed regular assigned mileage.

Article 11.

Towed or Deadheaded to Terminal.

Firemen tied up for rest under the law and then towed or deadheaded into terminal with or without engine, will be paid the same as if they had fired the engine to such terminal.

Article 12.

Breaking in Engines.

Firemen breaking in engines will be paid through freight
18¹ rates, ten hours or less, one hundred miles or less will constitute a day's work.

Article 13.

More Than One Class of Service in One Trip.

Section 1. When firemen perform two classes of service in one trip they shall be paid the highest rate of pay for either class of service for the entire trip.

Sec. 2. Firemen in through freight or work train service, required to load or unload stock, or do station switching, such as spotting cars and such work, as performed by local freights, will be paid local freight rates for the trip.

Article 14.

Station Switching.

Firemen called to do station switching at any place where there is not a regular switch engine, will be paid local freight pay for such service.

Article 15.

Called and Not Used.

When firemen are ordered out and not used on account of trains annulled or otherwise, they shall receive one-quarter day's pay. If held more than two and one-half hours and less than five hours, they shall be paid one-half day's pay. If held more than five hours they shall be paid for one day for such service which they are called.

Article 16.

Calling.

Firemen will be called at terminals not more than two hours before leaving time.

Article 17.

Work Train Tied Up Away and at Home Terminal.

Firemen in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period will begin at midnight following the tie up period.

When work train firemen are tied up at home terminal twenty-four hours, and it is apparent the work train will be idle for a longer period than twenty-four hours, except Sundays or holidays firemen will be allowed to return to the extra board, or to any run his seniority entitles him to. Home terminal of work train will be considered at Weleetka.

Article 18.

Tied Up Before Reaching Terminal.

Firemen in regular assigned freight service will not be tied up away from their terminal until the expiration of 15 hours and 30 minutes, and if tied up away from terminal their time to start at expiration of their required rest.

Article 19.

Firemen in Extra and Unassigned Service Held Away From Home Terminal.

Firemen in pool freight and in unassigned service held at other than home terminal, will be paid continuous time for all time so held after the expiration of twenty-two (22) hours from time relieved from previous duty, at the rate per hour paid him for the last service performed. If held fourteen (14) hours after the expiration of the first thirty-two (32) hour period, he will be paid continuous time for the next succeeding ten (10) hours, or until the end of the twenty-four (24) hour period, and similarly for each twenty-four (24) hour period thereafter. Should a fireman be called for duty after pay begins, his time will be computed continuously.

Home terminal for extra and unassigned firemen will be at Fort Smith.

18[5] Article 20.

Spending Sunday at Home.

Firemen assigned to regular runs with Sunday lay-over away from home, will be notified if required for service Sunday. If no notice is received, may absent themselves until time for their regular run Monday. If notified and not used, will be paid a minimum day.

When firemen have to change on the road in order to catch their regular runs on account of trains not running on holidays, it shall be arranged, if possible, to make the change so that the men will be at their home for holidays. The oldest fireman to have the preference in changing.

Article 21.

Coaling Engines.

Section 1. Should an emergency arise where a fireman is required to coal up his engine, he will be allowed and paid two hours for each

time required. This in addition to any regular or overtime made on that trip or day.

Sec. 2. Where coal is not taken at the terminal station beginning a trip or run, the coal will be shoveled ahead, by roundhouse force or watchmen.

Sec. 3. On all locomotives, passenger or freight, passing through terminal, coal will be shoveled forward so that it can be reached by firemen from deck of locomotive.

Sec. 4. Firemen when required to leave tank in order to take coal at coal chutes or fill water cars, will be paid one hour overtime at overtime rates in addition to all other time made for each service performed.

Article 22.

Time Not Allowed.

Section 1. When firemen's time slips are not allowed the Chairman of the Firemen's Committee will be notified within ten days after end of each pay period; if he is not notified, time slips will be allowed as turned in.

Sec. 2. Firemen's tie-ups will be checked from roundhouse register.

Sec. 3. Time checks will be issued for all shortage of time.

Article 23.

Physical Requirements.

Firemen in the service of this Company when they are examined for color perception, acuteness of vision or hearing, should the indoor test disclose a deficiency of perception, a field test shall be conducted in the following manner:

For vision: With the flags, lamps, and signals used in the daily operation of trains with or without glasses at a distance not to exceed two thousand feet. For the correct observation of semaphore arms, light and lamps or flag signals.

For hearing: Ability to hear ordinary conversation and air whistle signals under service conditions. The result of which shall determine the standing of the person examined.

The firemen's Committee shall be present when such tests are being made.

Article 24.

Seniority.

Section 1. The seniority rights of a fireman shall be based upon the first service performed as such, if employed as an experienced fireman, or when regularly assigned to firing service, if promoted from other service. The right to regular runs shall be governed by their seniority rights, thus established.

Sec. 2. When a run or turn becomes vacant permanently, the same shall be bulletined for a period of five days in such a manner that all interested may be advised and same shall be given to the senior fireman making application within that time, excepting that should the senior fireman make application for the vacancy when same occurs, he will be immediately assigned to same and the run vacated by him will be the one to be bulletined.

Sec. 3. It is understood that when a fireman bids in a run it will be considered that he desires that run, unless the bid is cancelled before the bulletin expires.

Sec. 4. Firemen failing to make application for a run when same is bulletined, will have the right to apply for same when it again becomes vacant, or when the run he is then holding shall be pulled off or changed affecting his wages or lay-over to his disadvantage. It being understood that the senior fireman shall have the preference, as to lay-over and runs.

Sec. 5. Temporary vacancies in passenger service will be filled by senior available freight firemen at time vacancy occurs, and the fireman catching the run will hold it until relieved by the regular man or is relieved by the senior freight fireman.

Sec. 6. When regular assigned freight runs have been vacant fifteen days, it will be bulletined for a period of five days and the oldest man applying for same will be assigned to the run, and he will hold same until relieved by the regular assigned man.

Sec. 7. There will be one firemen's extra board, they to fill all vacancies that occur on the system as per rules governing same. No more men to be assigned than necessary. Chicago Joint Agreement rules governing same to apply.

Sec. 8. Firemen who hold engineers' seniority rights and are reduced back to the ranks of firemen, will have preference to emergency runs according to their seniority on the engineer's list. If no demoted engineer available, the oldest fireman having passed required examination will be used.

The above rule will apply to demoted engineers who do not hold firemen seniority.

Sec. 9. Firemen when cut off the board on account of slack business, will be placed back in their turn, provided they keep the Master Mechanic advised of their whereabouts and return within fifteen days after being notified.

Article 25.

Miscalling Firemen.

Firemen when run around at terminal through no fault of their own and provided they have had their rest required by law, shall receive pay for the run the same as if they had been called.

Article 26.

Time Allowed to Eat.

Firemen will be allowed a reasonable time for eating at convenient places, but the Train Dispatcher will be notified of their intention to eat, and operators will deliver all messages to eating houses.

Article 27.

Rest.

When a fireman feels that he needs rest or is not able to work he will report to the proper officer at terminal and after a continuous service of sixteen hours he must be allowed ten hours' rest and send Trainmaster or Dispatcher notice when he will be ready for service again. Federal or State law to govern.

Article 28.

Deadheading on Company Business.

Firemen deadheading under company orders shall receive one-half pay for the service they are sent to represent.

Article 29.

Light Running.

Firemen on light runs shall be paid as per class of service causing same.

187 Article 30.

Attending Court.

Section 1. Firemen attending court at request of the company will be paid same rate of pay they would have made had they remained on their run, and if away from home station will be allowed legitimate expenses. Extra firemen will be paid through freight rates and expenses as above.

Sec. 2. Fireman attending court shall receive his voucher for same without any unnecessary delay.

Article 31.

Cleaning Engines and Drawing Supplies.

Firemen will be relieved of all cleaning of engines, and will not be required to draw or place supplies on engines, but will be required to know that supplies have been placed on engines before

starting trip. Roundhouse Foreman will see that necessary equipment is placed on engines before leaving roundhouse or terminal.

Article 32.

Furnishing Ice.

During hot weather the Company will furnish coolers or ice boxes and a supply of ice sufficient for a trip or day for each engine in service.

Article 33.

Firemen Required to Watch Engines.

When engines tie up where there is no watchman and the fireman is required to watch engine he will be paid ten miles for each hour of watching the engine at regular rates for the overtime for firing the engine.

Article 34.

Fines.

Firemen will not be suspended, given demerit marks or required to pay fines for the breakage or loss of tools or damage of any kind. Reasonable care on the part of firemen being required by the company to avoid damage to property.

Article 35.

Transportation.

When change of residence becomes necessary because of new assignment to runs firemen will be furnished free transportation for their household goods. Transportation will also be furnished all dependent members of their families from time to time over the Fort Smith & Western for a reasonable number of times per year.

Article 36.

Service Letters.

Service letters will be furnished firemen leaving the service of the company upon application to the Master Mechanic. Same to show cause of leaving service.

Article 37.

Leave of Absence.

Section 1. Leave of absence may be granted for no longer period than ninety days except in case of accident, sickness or agreement

between the Master Mechanic and Firemen's Adjustment Committee.

Sec. 2. Committeemen will be granted a leave of absence for the adjustment of differences or grievances that may arise between the Firemen and the Officials of the Company. Same to be arranged for as promptly as possible without interfering with the business of the Company.

Article 38.

Promotion to Engineer.

Section 1. Firemen will be examined and promoted, they having passed required examination according to seniority as firemen and will be assigned as engineers in the same relation to each other as they bore as firemen, excepting in case of failure to pass the examination will rank as junior engineers to those who passed them at the examination. In case of depression of business and a surplus of engineers, firemen shall have the right to resume their former position as firemen provided they are taken off the engineer's board in the reverse order of their seniority and will retain their rights as engineers when their services are again required as such.

Sec. 2. When necessary to increase the number of engineers, two firemen will be promoted to each engineer employed.

Article 39.

Discipline and Investigation.

Firemen shall not be discharged, suspended or given demerit marks except for good and sufficient cause of which he must immediately be notified, and should he upon receipt of same feel that his discipline is unjust, he shall have the right to an investigation if he makes application in writing for same within five days after receipt of such notice, before a Board of Inquiry consisting of the Superintendent, Trainmaster, Master Mechanic or Traveling Engineer, one from each department only being necessary to constitute such Board. He shall have the right to have any fireman on Committee of his own selection, employees of the Company, to assist him at the investigation and these only with the Officials will be permitted to examine or question witnesses. If not satisfied with the verdict of the Board, he will have the right within ten days to appeal his case in writing to the General Officers who will grant a hearing ordinarily within ten days. The intention being that ten days will be given each ranking officer to whom appeal is made. On such appeal the employees shall be represented as before, or may have the assistance of an officer of the organization of which he may be a member. If the punishment is found to be unjust, the employee will be paid for all time lost, or have any demerit marks removed from his record if such had been entered against him.

Article 40.

Adjustment Committee.

The regular authorized committee of firemen will represent the firemen in all matters that may arise between the company and the men, the officials assisting them as far as possible with company's record.

Change of Agreement.

No change in the foregoing rates, rules and regulations will be made without thirty days notice being given to either party.

FORT SMITH & WESTERN RAILROAD.
A. L. MILLS, *Receiver.*
THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.
GEO. KONGABLE, *Chairman.*

19 [Endorsed:] No. 283. Equity. Petition for Injunction and Equitable Relief. Filed July 14, 1917. Wm. S. Wellshear, Clerk.

Exhibit "F."

Agreement Between Fort Smith & Western R. R., Arthur L. Mills, Receiver, and Brotherhood of Railroad Trainmen, Effective August 1, 1916.

19 "F."

Agreement Between Fort Smith & Western Railroad, Arthur L. Mills, Receiver, and Brotherhood of Railroad Trainmen, Governing Wages and Working Conditions of All Trainmen and Yardmen Employed by said Railroad, Effective August 1st, 1916.

Article 1.

Passenger Service.

Section A—Passenger trainmen will be paid as follows:
Brakemen $81.05 per month.
Flagmen $81.05 per month.
Maximum miles 6,000.
Overtime Brakemen and Flagmen 27½c. per hour.
Road overtime will be computed on basis of 15 miles per hour. This overtime to be computed separately for each part of trip.
Section B—Passenger trainmen will be allowed one hour overtime for each cut of freight cars handled. If more than one destination one hour will be allowed for each destination.

Passenger crews required to switch or spot freight cars at stations will be allowed one hour overtime.

These to be arbitrary allowances.

Article 2.

Extra Passenger, Special and Excursion Trains.

Trainmen will be paid in extra passenger, special and excursion trains as follows:

Brakeman and Flagmen 1.7c. per mile.

175 miles or less, ten hours or less, to constitute a day.

All over 175 miles or ten hours will be paid pro-rata.

Article 3.

Passenger Trainmen Used on Layover Days.

Section A—A white flagman or brakeman will be placed on all passenger, special and excursion trains.

Section B—Passenger trainmen used on layover days will be paid for extra service performed in addition to regular pay.

Article 4.

Passenger Crews Turning Engines and Switching Trains.

Passenger trainmen required to switch or turn any part of train or engine will receive one hour overtime for performing such work.

Article 5.

Circus Trains.

Trainmen assigned to circus trains will be paid through freight rates and the time will be computed on basis of time and one-half and allowed as miles or hours, whichever amounts to the most, from the time ordered to begin work until tied up at an intermediate point or relieved at a terminal, it being understood that the trainmen assigned to this service may be tied up at any point. Such tie up will end the run and another day begins when placed on duty. A minimum of 150 miles will be allowed for all days while assigned to this service. No overtime will be allowed except on basis provided above.

19[2] Article 6.

Through Freight Service.

Trainmen in through freight service will be paid as follows:

Brakeman $2.80 per hundred miles.

One hundred miles or less, ten hours or less, to constitute a day, with overtime pro rata.

Article 7.

Time Consumed on Through Freight.

Trainmen in through freight service delayed at any one station thirty minutes or more picking up, setting out or weighing cars, will be paid the ac-ual time consumed in doing this work in excess of all other time or mileage made.

Under thirty minutes no allowance will be made. If the compensation for through freight trip on the above basis exceeds that for local freight service for the same trip the latter will apply. This rule does not in any way conflict with trainmen's schedule governing two classes of service performed on one trip.

Article 8.

More Than One Class of Service on One Trip.

When trainmen in any class of service perform more than one class of service on the trip they will be paid the highest rate of pay for the class of service performed on the trip.

Trainmen in through freight or work train service required to load or unload stock or do station switching, such as spotting cars and such work as is performed by local freight will be paid local pay for the trip.

Article 9.

Initial Terminal Delay.

Initial terminal delay will start from the time the trainmen are ordered to report for work. Trainmen will report far enough in advance of this time to see that they have all of their supplies, but not to exceed thirty minutes.

When trainmen are delayed within the terminals as much as one hour beyond the time they are ordered to report for work they will be paid one hour overtime at overtime rates.

One hour and thirty minutes constitutes two hours, etc.

If road overtime is made on the same trip initial terminal delay will be deducted.

Freight trainmen's initial terminal delay stops when train leaves initial yards.

Final Terminal Delay.

When trainmen are delayed fifteen minutes or more after arriving at their terminal they will be paid at overtime rates on the minute basis. Less than fifteen minutes not to be counted; their time to start when they arrive at the switch leading from the main line into yards and will end when trainmen are relieved from all duty.

On runs of less than one hundred miles payment for final delay, except passenger trainmen, will not be made until after ten hours service.

Article 10.

Crews Will Be Reduced.

When the freight train traffic on any portion of the road is so reduced that through freight crews cannot make 2,700 miles per month and irregular crews 2,600 miles per month, a sufficient number of crews will be laid off, beginning with the youngest man, so that crews can make as near as possible as stated above.

Article 11.

Trainmen Required to Load or Unload Stock or Bridge Material, etc.

Trainmen required to actually perform the work of bedding stock cars, loading or unloading stock or bridge material, will be allowed one hour overtime. If time consumed in performing
19[illegible] this work amounts to one hour and thirty minutes, two hours will be allowed, etc.

Article 12.

Cables.

Trainmen on work trains will not be required to handle cables if section, extra gang or other men are available.

Article 13.

Chain Gang Crews.

Trainmen assigned to chain gang crews will run first in, first out.

Article 14.

Local and Way Freight.

Brakemen on way freight and mixed runs will be paid $83.50 per calender work day month.

One hundred miles or less, ten hours or less, to constitute a day, with overtime pro rata.

Article 15.

Number of Brakemen on Local and Mixed Runs.

When business is heavy on local trains, the Chairman of Trainmen's Committee will confer with officials, and if shown that three men are needed they will be placed on trains.

Article 16.

Trainmen Not to be Used on Layover Days Except in Emergency.

Trainmen assigned to local, mixed, through or irregular freight trains will not be used on lay over days except in cases of emergency. If so used they will receive pay for class of service performed.

Article 17.

Work Train Service.

Trainmen in work train service will be paid as follows:

Brakemen $2.92 per day.

One hundred miles or less, 10 hours or less, to constitute a day.

Excess mileage and overtime to be paid at pro rata rates.

Work train is construed to mean one handling company material or engaged in wrecking service. Trainmen in work train service will be paid for legal holidays—New Year's Day, Fourth of July, Thanksgiving Day and Christmas Day.

It is not the intention to use work train crews on these days, but in case they are used they will be paid for such service performed in addition to regular work train day.

Section B—Trainmen in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period to begin at midnight following the tie-up period. When it is apparent that work train crews will be idle for a longer period than twenty-four hours at home terminals, except Sunday and holidays, they will be relieved and used in other service. Home terminal of work train will be at Weleetka.

Article 18.

Water Cars.

Trainmen will not be required to fill more than two water cars at any one place, and not at all at terminals.

Article 19.

Relieving Firemen.

Trainmen will not be required to assist firemen in any duties except in cases of emergency. When a fireman becomes disabled, it will be expected of trainmen to render all assistance in their power to enable train to reach destination or until relief firemen can be procured. When trainmen are so used they will be paid a minimum day at

trainmen's pay and overtime made at time he relieved fire-
19[4] man, and a minimum day at firemen's pay. It is understood that trainmen are not experienced firemen but in general interests of the service will cheerfully render all assistance possible.

Article 20.

Rest.

Trainmen will not be required to go out when they claim they need rest.

Article 21.

Trainmen Will Not Be Tied Up.

Trainmen in regular assigned freight service will not be tied up away from their terminal until after the expiration of fifteen hours and thirty minutes' service, and if tied up away from terminal their time to start upon the expiration of their required rest.

Article 22.

Towed or Dead-headed into Terminal.

Road trainmen tied up for rest under the law and then towed or dead-headed into terminal, with or without engine or caboose, will be paid the same rate as if they had run the train to such terminal.

Article 23.

Fraction of a Mile.

Any fraction of a mile less than .5 will not be counted. .5 and over to be counted as a mile.

Article 24.

Overtime.

All overtime will be paid on the minute basis; less than five minutes not to be counted.

Article 25.

Continuous Time on Turn-around Runs.

On all turn-around runs continuous time will apply. If tied up on account of the Service Law, time the trainmen consume in taking the required rest will be deducted.

This rule does not apply to turn-around out of Oklahoma City and Sparks.

Article 26.

Trainmen in Extra Unassigned Service.

Trainmen in pool freight and unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of twenty-two hours from time relieved from previous duty, at the rate per hour paid for last service performed; if held fourteen hours after the expiration of the first thirty-two hour period they will be paid continuous time for the next succeeding ten hours or until the end of the twenty-four hour period and similarly for each twenty-four hour period thereafter. Should a trainman be called for duty after pay begins his time will be computed continuously.

Home terminal for extra and unassigned trainmen will be at Weleetka.

Article 27.

Yard Service.

Brakemen in yard service will receive pay as follows:
35 cents per hour, days.
37 cents per hour, nights.
10 hours or less to constitute a day.
Day engines will work between the hours of 6 a. m. and 6 p. m.
Night engines from 6 p. m. to 6 a. m.
Brakemen required to work any part of night hours will receive pay at night engine rates for such time.
Meal hour on switch engine will be from 11:30 a. m. until 1 p. m., and from 11:30 p. m. to 1 a. m. Brakemen who do not receive one full hour between above times will be paid for the meal hour and will receive in addition thirty minutes for lunch under pay.

19[illegible]

Article 28.

Promotion.

For each conductor hired from ranks or elsewhere at least two oldest brakemen will be promoted. When such conductor is hired he will hold no rights as brakeman.
Brakemen will be promoted according to seniority.

Article 29.

Doubling.

Ten miles will be allowed for each double, unless doubling is more than ten miles, in which case actual miles will be allowed.
No allowance will be made for doubling when 100 miles or less or ten hours or less are made for which 100 miles is paid.

Article 30.

Called and Not Used.

When trainmen or yardmen are called and for any reason not their own, fail to be used they will be paid as follows:

If held on duty for less than five hours and relieved, they will be paid one-half day at rate called for and stand first out.

If held five hours and relieved they will be paid one day at rate of class of service called for and stand last out.

Article 31.

Closing Car Doors.

Trainmen will be relieved from closing empty car doors where carmen are on duty.

Article 32.

Assigned Crews Not Used.

Regular assigned crews when not used through no fault of their own will be paid a minimum day except in cases of washouts, wrecks or track otherwise obstructed.

Article 33.

Terminal.

No place will be considered a terminal before the date the time card goes into effect showing the new terminal.

Article 34.

Brassing Cars.

Passenger trainmen will not be required to brass cars except in cases of emergency.

Freight trainmen will not be required to brass cars except expedite freight.

Article 35.

Extra Board Cut.

Extra board will not be cut without consent of the Chairman of the Adjustment Committee.

Article 36.

Extra Board.

There will be one extra board maintained.

Article 37.

Eating.

Trainmen will not be required to go longer than six hours without eating and will be allowed a reasonable time at convenient place. Dispatcher to be notified.

Article 38.

Bulletin Board.

All bulletin boards will be revised at least once a year.

Article 39.

Time Slips Not Allowed.

When trainmen's time slips are not allowed, trainmen and Chairman of Committee will be notified within ten (10) days from each pay day period.

Article 40.

Shortage.

When shortage occurs in pay checks, time check will be issued at once.

Article 41.

Pilot.

All engines running light and all trains from foreign lines will be piloted when pilots are available. When conductor is not available the oldest competent brakeman in service will be used and he will receive conductor's rate of pay at through freight rates.

Article 42.

Sunday Lay-over.

Trainmen assigned to regular runs with Sunday lay-over away from home will be notified if required for service Sunday. If no notice is received, may absent themselves for time of regular run. If notified and not used they will be paid a minimum day. When trainmen have to change on road on account of holidays it shall be arranged, if possible, to make the change so that the men will be at their homes for the holidays. Oldest men to have preference in the changing.

Article 43.

Coaling Engines.

Trainmen required to coal engines will be paid two hours overtime for each engine coaled. This to be an arbitrary allowance.

Article 44.

Rights.

Trainmen's seniority will apply in all classes of service.

Article 45.

Bulletin Runs.

In the future the Chairman of the Adjustment Committee will bulletin all vacant runs and make all assignments subject to the approval of Superintendent.

Trainmen will send copy of all bids on runs to Superintendent, marking on same "Copy."

Article 46.

Trainmen Laying Off.

Regular trainmen may lay off at any terminal. When he resumes work he will take his run at terminal where he was relieved, except if a regular trainmen's run is held away from terminal for any cause the regular assigned trainman will be allowed to go to his run when he reports for duty.

Extra men can relieve emergency men at any point starting a new day.

Article 47.

Loading Cotton.

Train crews will not be required to load more than five bales of cotton at any one station, and these to be on cotton platforms.

Article 48.

Trainmen Assigned.

Trainmen will be assigned to runs according to seniority.

Article 49.

Runs Bulletined.

A new run put on, two hours or more change in time, ten miles or more change in mileage, ten dollars or more change in salary, change

terminal or a change in class of service, will be considered a new
n and no runs will be bulletined except under the above conditions
d when a run is vacated. When a man is displaced on an estab-
shed run by reason of its being Bulletined in accordance with the
ove provision or by reduction of force, he will have the right to
ke any run his seniority will permit him to hold, provided he
makes application for such run with- five days from date of
9r his displacement, and failing to do so he loses all rights to dis-
place his juniors and will be required to go to extra board
ntil such time as there is another vacancy.

Article 50.

Applications Approved.

When a trainman has been in the service for a period of sixty
lays his application will stand approved.

Article 51.

Trainmen Dismissed.

Trainmen dismissed from the service will not be reinstated after
a period of ninety days unless his case is pending in the hands of
he Adjustment Committee.

Article 52.

Trainmen Giving Up Runs.

Trainmen giving up an assigned or closed run will go to the extra
board.

Article 53.

Trainmen Laying Off.

Trainmen not having access to bulletins on account of sickness
or leave of absence or other good and sufficient cause will, upon
returning to service, have the right in accordance with their seniority
to runs bulletined during such time.

Article 54.

Discipline.

Trainmen will not be discharged or otherwise disciplined without
sufficient cause; in case trainmen believe they have been unjustly
disciplined or discharged, they will have the right to make complaint
in writing within ten days and shall, upon request of himself or a
committee of trainmen, be granted a hearing by the proper officials

within five days or as soon thereafter as practicable, at which hearing he may be present with any conductor, brakeman or yardman of his choice in the employ of the company, and present any witness or witnesses having knowledge of the facts. If dissatisfied with the decision of the official an appeal in writing may be made to Vice-President, General Manager or Receiver within thirty days from the close of the first hearing. In case he has been unjustly discharged he will be reinstated and paid for all time lost. If otherwise disciplined unjustly it will be corrected.

Article 55.

Leave of Absence.

Trainmen will not be granted a leave of absence for a period longer than ninety (90) days except in case of sickness, injury or doing committee work, unless agreed by Trainmen's Committee and Superintendent to give such trainman a longer leave of absence. Chairman of Committee to be notified of all renewals granted.

Article 56.

Supplying Cabooses.

Where car men are on duty trainmen will not be expected to supply cabooses with brasses, chains, switch ropes, knuckles, knuckle pins, air hose, frogs, packing, oil and waste or similar articles, or transfer supplies in cabooses except in cases of emergency.

At the end of each trip a requisition will be made out for all such supplies needed, and trainmen must know that all necessary supplies are on caboose before starting on the run and will procure anything that has been overlooked with the least possible delay.

Article 57.

Chaining Up and Handling Bad Order Cars.

Section A—Trainmen will not be required to chain up cars unless loaded with live stock or perishable freight except to get them to nearest available side track or to terminal if within reasonable distance.

19[8] Section B—Trainmen will not be required to couple or uncouple hose or test air where car men are on duty.

Article 58.

Fines.

Trainmen will not be required to pay fines for breakage, damage or clerical errors.

Article 59.

Attending Court.

Trainmen attending court at the request of the Company will be paid the same rate as they would have made had they remained on their run, and if away from home will be allowed legitimate expenses. Extra trainmen will be paid a minimum day at through freight rates and expenses as stated above. Trainmen attending court will receive their vouchers without unnecessary delay.

Article 60.

Deadheading.

Trainmen deadheading under company's orders shall receive one-half pay for the class of service they represent.

Article 61.

Trainmen Run Off Regular Runs.

Trainmen run off regular assigned sub-division will stand first out for return to their home terminal, after period of rest is up in compliance with the Hours of Service Act.

Trainmen not to be used off their regular assigned sub-division for more than one trip successively, except in case of wrecks or washouts. This not to apply to chain-gang crews.

Article 62.

Calling.

Trainmen coming in late, or needing rest, or getting out early, will, when they inform the operator or dispatcher, be called not more than one hour and thirty minutes before time to commence work. This to apply at terminals.

Article 63.

Trainmen Moving.

When it is necessary for a trainman to transfer from one division to another, said employee will be furnished free transportation for himself, family and household goods in so far as the law will permit.

Article 64.

Ice.

Trainmen will be furnished with sufficient amount of ice from March 1st to November 1st.

Article 65.

Service Letters.

When a trainman resigns or is discharged, he shall be furnished service letter within ten days of resignation or dismissal.

Article 66.

Seniority List.

The Chairman of Adjustment Committee of B. of R. T. will upon request be furnished a seniority list showing the correct seniority of all trainmen employed by the railroad.

Article 67.

Preceeding Articles.

The preceeding articles herein constitute in their entirety an agreement between the Fort Smith & Western Railroad and their trainmen; same to take effect August 1st, 1916. No departure from the provisions of this contract will be made by either party until thirty (30) days notice has been served upon each other.

FORT SMITH & WESTERN RAILROAD,
A. L. MILLS, *Receiver.*
F. B. DICKOVER,
For the Trainmen and Yardmen.

20 *Entry of Appearance.*

(Filed in U. S. District Court July 14, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY et al., Plaintiffs,

vs.

ARTHUR L. MILLS, Receiver, et al., Defendants.

Entry of Appearance.

Arthur L. Mills and J. Virgil Bourland, defendants in the above entitled action now come and waive the issuance and service of process and enter respectively their personal appearance herein.

ARTHUR L. MILLS,
By HARRY P. WARNER,
His Attorney.

Filed July 14, 1917. Wm. S. Wellshear, Clerk.

21 *Motion to Dismiss.*

(Filed in U. S. District Court July 25, 1917.)

THE FT. SMITH & WESTERN RY. COMPANY

vs.

ARTHUR L. MILLS, as Receiver, et al.

The defendant, J. V. Bourland, as United States Attorney, moves a dismissal of the bill of plaintiffs, because there is misjoinder of defendants; it appearing upon the face of the bill that it has for its object the injoining of this defendant as United States Attorney from proceeding by information in the United States upon the so called Adamson law against the defendant Receiver of the Ft. Smith & Western Railroad, upon allegations of fact, which the bill admits to be true, that said Receiver ever since the date of the passage of said law, has wilfully failed and refused to compensate its train employees and operatives upon a basis of an eight hour day and for overtime of service in accordance with said law; whereas plaintiffs at the same time and by the same bill seek injunctive relief against said Receiver, an officer of this court, upon the ground that he as such receiver is about to comply with the terms of said law by paying said employees upon the basis of eight hours as a day's work and for overtime on that basis.

II.

Because joint action for relief as prayed against said defendants is inconsistent, and because said defendants are not jointly acting or alleged about to act, nor are the said defendants legally related, but their attitude as officers, so far as said law is concerned, should be one of obedience to it.

22 III.

Because upon its face the bill shows that plaintiffs have a complete and adequate remedy at law.

IV.

Because this court has no jurisdiction to enjoin defendant, Bourland, as United States Attorney, as the bill upon its face shows, from filing information against said Receiver, charging a criminal violation of said law.

V.

Because the bill shows upon its face that it is without equity, in that it seeks to injoin defendant Bourland, as United States Attorney

from inforcing the criminal laws of the United States against a person, who, if liable at all, must respond personally to such penalties as the court, under said law, may impose, and in which plaintiffs are in no way shown to be legally interested.

VI.

Because plaintiffs show no ground for equitable relief in the special matter set up in the bill, namely, the excessive financial indebtedness of the Ft. Smith & Western Railway Co. and its costs of maintenance and falling off or earnings, and because, for these reasons, it will be unable to pay employees in accordance with the terms of the law, or pay penalties if imposed by prosecutions thereunder.

VII.

Because, from the allegations of the bill, it appears as matter of law, that the contract made with its employees for service by the said railway immediately prior to the date of the enactment of said law was necessarily understood and regarded by said Railway as made subject at least to the possibility that Congress might, at some future time, so exert the whole Constitutional power in regulating
23 interstate commerce, as to render that contract or agreement uninforceable or greatly impair its value; and hence, also well knew at the time, that the enforcement of the Adamson law or any similar law, when passed, would neither violate the obligation of contract, nor have the constitutional effect to deprive said railway of its property without just compensation, though it have the effect to compell said railway to compensate its employees at a higher rate and upon a different basis than is stipulated in said agreement.

VIII.

Because the bill does not state facts sufficient to entitle plaintiffs or either or them, to the relief prayed for, or for any relief in equity.

J. V. BOURLAND,
United States Attorney.

Filed July 25, 1917. Wm. S. Wellshear, Clerk.

24 *Amended Motion to Dismiss.*

(Filed in U. S. District Court July 30, 1917.)

In Equity. No. 383.

THE FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee, Plaintiffs,

v.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas, Defendants.

Amended Motion of J. Virgil Bourland, United States Attorney, etc., to Dismiss the Petition.

J. Virgil Bourland, United States Attorney for the Western District of Arkansas, sued as such, defendant, now comes and moves the court to dismiss the petition at the cost of the plaintiffs.

As grounds for this motion it is shown—

1. The plaintiffs may not sue jointly the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company concerning a subject matter which is not "in respect of any act or transaction" of the receiver "in carrying on the business connected with such property," without the previous leave of the court first had and obtained.

2. The plaintiffs have not such an interest in the subject matter,—as their alleged interest, if any they have, is too remote,—as authorizes them to maintain the suit and the petition filed by them against the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company jointly is an attempt to intermeddle and interfere with the proper maintenance, operation, and administration of the property
25 by the receiver in accordance with the laws of the land and to obstruct a public official in requiring a proper observance thereof.

3. The plaintiffs have mistaken their cause of action and remedy, if any they have, as they have no authority or standing to maintain the petition in this court against the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company jointly as—

(*a*) the court appointed the receiver as its own officer and in maintaining, operating, and administering the property, the court does not direct, or communicate with, its own officer through the medium of injunction orders;

(*b*) the receiver is presumably acting under the authority of the court which appointed him.

4. As applicable to the receiver of the Fort Smith & Western Railroad Company, the Act of Congress approved February 3 and 5, 1916, entitled "An Act to establish an eight hour day for employees

of carriers engaged in interstate and foreign commerce, and for other purposes," is constitutional.

5. The petition is without equity on its face for insufficiency of fact to constitute a valid cause of action.

Wherefore, defendant prays that his motion be sustained.

J. V. BOURLAND,
United States Attorney,
Western District of Arkansas.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

Filed July 30, 1917. Wm. S. Wellshear, Clerk.

26 *Decree.*

(Entered in U. S. District Court Aug. 1, 1917.)

No. 283. Equity.

THE FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas, Defendants.

This cause came on to be heard at this term on the amended motion of the defendant, J. Virgil Bourland, United States Attorney, etc., to dismiss the petition for injunction, and the same was argued by counsel, Blackburn Esterline, Special Assistant to the Attorney General and J. Virgil Bourland, in propria personæ, for the motion, and James B. McDonough, in opposition thereto; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz:

First. That the amended motion to dismiss the petition be and the same is hereby sustained.

Second. That the petition for injunction be and the same is hereby dismissed for want of equity at the cost of the plaintiffs.

To which order and each and every part thereof the plaintiffs by their counsel, then and there in open court objected and excepted.

FRANK A. YOUMANS,
United States District Judge,
Western District of Arkansas.

27 *Petition for Appeal.*

(Filed in U. S. District Court August 6, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY, and SUPERIOR SAVINGS & TRUST COMPANY, Trustee, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Petition for Appeal.

Come now the Superior Savings & Trust Company, Trustee, as Trustee, and the Fort Smith & Western Railroad Company, and represent to this Honorable Court that in the case of The Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, Plaintiffs, vs. Arthur L. Mills as Receiver, and J. Virgil Bourland, United District Attorney for the Western District of Arkansas, defendants, being case No. 283, Eq., which is a cause pending in the United States District Court for the Western District of Arkansas, Fort Smith Division, the defendants in error or appellees, being the defendants below, secured a judgment and decree of this court dismissing the complaint herein for want of equity.

Your petitioners respectfully represent that they filed their complaint in equity herein on the 14th day of July, 1917, and the defendant, Arthur L. Mills, as Receiver of the Fort Smith & Western Railroad Company filed his answer admitting the allegations of the complaint in equity to be true. The defendant, J. Virgil Bourland filed herein an amended motion to dismiss this cause for want of equity. This amended motion to dismiss was filed herein before August 2, 1917. The said motion to dismiss came on for hearing in the United States District Court for the Western District of Arkansas, Fort Smith Division, on August 2, 1917. The

28 said United States District Court, upon a hearing on said motion to dismiss, sustained the same. Thereupon said United States District Court for the Western District of Arkansas, Fort Smith Division, sitting in equity in said cause No. 283 in Equity, sustained said motion to dismiss, and dismissed the complaint of the appellants herein, and rendered a decree against the said appellants for the costs. The appellants, sometimes called herein, the Plaintiffs in Error, to-wit: The Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, Trustee, duly excepted to the action of the court, in sustaining said motion to dismiss and in dismissing their complaint herein, and prayed an appeal to the Supreme Court of the United States. The said United States District Court for the Western District of Arkansas, Fort Smith Division, in said decree above referred to, held that the complaint herein did not state a cause of action in equity, and that

said Fort Smith & Western Railroad and the Superior Savings & Trust Company were not entitled to the relief prayed for and thereby held that the Act of Congress, passed and approved September 2, 1916, being an Act entitled, "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce" and commonly known as the Adamson Act, was not in conflict with the Fifth Amendment of the Constitution of the United States. The final order of the court, decreeing and adjudging that said complaint should be dismissed was made on August 2, 1917. The appellants herein, the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company resisted said decree and judgment of the court on the ground that the said Act of Congress was void, because in conflict with Amendment No. 5 of the Constitution of the United States, in that said Acts of Congress deprived the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, of their liberty of contract, and property, without due process of law, and
29 took their private property for public use without just compensation.

The petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, respectfully show that late in the afternoon of August 2, 1917, and after the court had dismissed the bill of complaint referred to, the said J. Virgil Bourland, United States District Attorney caused six warrants of arrest to be issued against Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, charging and alleging that said receiver had violated the said Act of Congress passed and approved September 2, 1916, and otherwise described above.

Your petitioners further allege that the said Arthur L. Mills, Receiver, is making preparations to pay out the sums of money described in the bill of complaint and said payments will be made if a temporary restraining order is not granted herein, and the parties to whom said payments will be made are insolvent, and even if the judgment herein is reversed the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company will thereby lose said money, amounting in the aggregate to approximately $7,000.00, as a judgment against the payees would be worthless and nothing could be collected on any such judgment.

Wherefore your petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, feeling aggrieved by said decree and judgment of the court, appeal from said judgment on the ground that said Act of Congress is void as against your petitioners for the reasons above set forth. The said appeal is based upon the reasons specified and set forth in the Assignment of Errors filed herewith, and the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company pray that an appeal be allowed and granted to them, and that said appeal and pleadings and all of the orders, mandates,
30 decrees and judgments, transcript and other proceedings had in this cause relating to said decree dismissing said complaint may be transmitted to the Supreme Court of the United States;

s provided by the Acts of Congress, and further pray that Honorable Court may hear said cause anew, and further pray that said judgment and decree of the court aforesaid be reversed and that a decree n favor of the Fort Smith & Western Railroad Company and the uperior Savings & Trust Company be made, adjudging and decreeing that said petitioners are entitled to the relief prayed for in he appeal and for such other and further proceedings herein as our petitioners may be entitled to in equity and good conscience.

A. C. DUSTIN,
JAMES B. McDONOUGH,
Attorneys for Petitioners and Appellants.

Affidavit.

STATE OF ARKANSAS,
County of Sebastian, ss:

I, James B. McDonough, being first duly sworn, on my oath state hat I am one of the attorneys of the Fort Smith & Western Railroad Company and of the Superior Savings & Trust Company, Petiioners and appellants in the above entitled cause, and I further tate that I am familiar with the controversy in said cause, and I further state that the amount in controversy exceeds the sum of Five Thousand Dollars ($5,000.00) exclusive of interest and costs.

JAMES B. McDONOUGH.

Subscribed and sworn to before me this 6 day of August, 1917.

WM. S. WELLSHEAR, *Clerk.*

Filed August 6, 1917. Wm. S. Wellshear, Clerk.

61 *Assignment of Errors.*

(Filed in U. S. District Court August 6, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY, and SUPERIOR SAVINGS & TRUST COMPANY, Plaintiffs.

vs.

ARTHUR L. MILLS, as Receiver and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Assignment of Errors.

Come the appellants and petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, and file herein the following assignment of errors, appearing upon the record in this cause, which said appellants and petitioners aver occurred upon the trial of said cause, and for which the judgment should be reversed.

1.

The court erred in holding that the Act of Congress passed and approved September 2, 1916, and entitled, "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson Law, was valid as against the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company.

2.

The court erred in holding and decreeing that the said Act of Congress passed and approved September 2, 1916, entitled "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson law was not in conflict with Amendment No. Five of the Constitution of the United States, and therefore void.

3.

The court erred in holding and decreeing that the said
32 Act of Congress passed and approved September 2, 1916, entitled "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson law was not in conflict with Section One of Article Fourteen of the Constitution of the United States, and therefore void.

4.

The court erred in dismissing the bill of complaint of the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company for want of equity and in rendering a decree against said plaintiffs for costs.

Wherefore the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, petitioners and appellants and plaintiffs on this appeal pray that the judgment and decree of the United States District Court for the Western District of Arkansas, Fort Smith Division, rendered on the second day of August, 1917, against the said Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, dismissing their bill of complaint be reversed and that said cause be remanded to the court below for further proceedings as may be proper to be taken therein, under the laws of the United States and the directions of this court.

THE FORT SMITH & WESTERN
RAILROAD COMPANY, AND
THE SUPERIOR SAVINGS &
TRUST COMPANY,
By A. C. DUSTIN,
JAMES B. McDONOUGH,
Their Attorneys.

Filed August 6, 1917. Wm. S. Wellshear, Clerk.

33 *Order Allowing Appeal.*

(Entered in U. S. District Court August 6, 1917.)

No. 283. Equity.

THE FORT SMITH & WESTERN RAILROAD COMPANY and SUPERIOR SAVINGS & TRUST COMPANY, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Order of the Court Allowing Appeal to the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company.

On this 6th day of August, 1917, came the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, by their counsel, James B. McDonough, and presented herein their petition for appeal and also presented an assignment of errors, accompanying the same, which petition upon consideration of the court is hereby allowed. And the court hereby allows an appeal to the Supreme Court of the United States upon the filing of a bond in the sum of Ten Thousand Dollars ($10,000.00) with good and sufficient surety to be approved by this court.

The said appeal is hereby granted to the said Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, from the decree and judgment of the court, dismissing for want of equity the bill of complaint herein.

It further appearing that the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company have filed their assignment of errors and petition for appeal and a bond duly executed and the court being satisfied that the sureties on said bond are good and sufficient, said bond is by the court approved.

It is further ordered that the clerk of this court make out
34 immediately and send to the Clerk of the Supreme Court of the United States, under the seal of this court, all the records and proceedings, and all things concerning the judgment and decree above referred to, together with this order, allowing this appeal and that said records be transmitted to said clerk of the Supreme Court of the United States at the City of Washington, District of Columbia, to the end that if any error be in the judgment and decree of this court that said Supreme Court of the United States may cause further to be done in said matter to correct said error, if error there be, in dismissing said bill of complaint.

It further appearing to the court that said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company prayed a temporary injunction, enjoining the receiver, Arthur L. Mills, from paying out of the funds of the Receivership the moneys

involved and referred to in the Bill of Complaint herein, the court declines and refuses to grant an injunction suspending the action of the Receiver in the premises.

FRANK A. YOUMANS, *Judge.*

Filed August 6, 1917. Wm. S. Wellshear, Clerk.

35 *Bond on Appeal.*

(Filed in U. S. District Court August 6, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY and SUPERIOR SAVINGS & TRUST COMPANY, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Bond.

Know all men by these presents: That we, the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, Trustee, and the American Surety Company of New York, as surety, are held and firmly bound unto Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States District Attorney, in the full and just sum of Ten Thousand Dollars ($10,000), to be paid to the said parties, their attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 6th day of August, 1917.

The above obligation is upon the conditions named below:

Whereas lately at a District Court of the United States for the Western District of Arkansas, Fort Smith Division, in a suit pending in said court, wherein the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company are plaintiffs and Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States District Attorney, were defendants, said cause being numbered 283 Equity, a decree was rendered by said court on August 2, 1917, dismissing
36 the bill of complaint and adjudging the costs against the petitioners and appellants herein, and

Whereas the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have taken an appeal from the decree and order of the court in the premises above referred to and have filed a copy thereof in the Clerk's office of the Supreme Court of the United States to reverse said decree, dismissing the said bill of complaint, and a citation directed to Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J.

Virgil Bourland, District Attorney, citing and admonishing said parties to be and appear at a session of the United States Supreme Court to be holden in the city of Washington, District of Columbia, within the time required by law, and

Whereas the same questions were raised by the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, by filing the same petition in the case of Superior Savings & Trust Company, Trustee, vs. The Fort Smith & Western Railroad Company, No. 254, Equity, in this court, and

Whereas the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have appealed from the order of the court in said cause No. 254, which order dismissed the petition praying for the same relief, and

Whereas the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have appealed from the order of the court dismissing the petition in said cause No. 254, and

Whereas a citation has been issued in that cause, citing and admonishing the said Arthur L. Mills, Receiver, of the Fort Smith & Western Railroad Company, to appear at a session of the
37 United States Supreme Court to be holden in the city of Washington, District of Columbia, within the time required by law,

Now the condition of the above obligation is such that if the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company shall duly prosecute their appeals to effect and answer all damages and costs in each case above named, if they fail to make good their pleas and appeals in each and both of said cases, then the above obligation to be void; else to remain in full force and virtue.

THE FORT SMITH & WESTERN RAILROAD COMPANY,
By JAMES B. McDONOUGH, *Its Attorney.*
THE SUPERIOR SAVINGS & TRUST COMPANY,
By JAMES B. McDONOUGH, *Its Attorney.*
THE AMERICAN SURETY COMPANY OF NEW YORK,
By CECIL WARNER, *Res. Vice Pres.*

Attest:

HARRY K. ALBERS,
Its Ass't Sec.

Approved by—

FRANK A. YOUMANS,
United States District Judge.

Filed August 6, 1917. Wm. S. Wellshear, Clerk.

38 *Præcipe for Transcript.*

(Filed in U. S. District Court August 6, 1917.)

THE FORT SMITH & WESTERN RAILROAD COMPANY and SUPERIOR SAVINGS & TRUST COMPANY, Plaintiffs,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney, Defendants.

Præcipe.

To William S. Wellshear, Clerk of the United States District Court, Western District of Arkansas, Fort Smith Division:

In the above entitled cause recently pending in your court as No. 283, Equity, in the preparation of the papers in response to the appeal and writ of error, please include the following papers:

The Bill of Complaint, the appearance of the Receiver, Arthur L. Mills, the Amended motion to Dismiss, and the Decree of the Court, dismissing the complaint for want of equity on the second day of August, 1917, and also all other demurrers, answers and replies and other papers that may be in said cause, and all the orders of the court made in said cause, relating thereto.

JAMES B. McDONOUGH,
Attorney for The Fort Smith & Western Railroad Company and the Superior Savings & Trust Company.

We, Counsel for the defendants, J. Virgil Bourland, and Arthur L. Mills hereby acknowledge service of the above præcipe, this 6th day of August, 1917.

J. V. BOURLAND,
Attorney for J. Virgil Bourland.
HARRY P. WARNER,
Attorney for Arthur L. Mills, Receiver.

Filed August 6, 1917. Wm. S. Wellshear, Clerk.

Memorandum Opinion.

(Filed in U. S. District Court August 1, 1917.)

District Court of the United States, Western District of Arkansas, Fort Smith Division.

No. 283. Equity.

THE FORT SMITH & WESTERN RAILROAD COMPANY et al., Plaintiffs,

vs.

ARTHUR L. MILLS, Receiver, et al., Defendants.

Memorandum Opinion.

The motion to dismiss is sustained and the injunction denied upon the authority of the decision of the Supreme Court of the United States in the case of Wilson v. New construing the so called Adamson law.

FRANK A. YOUMANS, *Judge.*

Filed August 1, 1917. Wm. S. Wellshear, Clerk.

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the foregoing pages numbered 1 to 39, inclusive, contain and constitute a true and correct copy of the record, assignment of errors, and all proceedings in the case of The Fort Smith & Western Railroad Company and The Superior Savings & Trust Company, as Trustee, v. Arthur L. Mills, as Receiver, and J. Virgil Bourland, United States Attorney for the Western District of Arkansas, No. 283 in Equity, as the same appear on file and of record in my said office in the Fort Smith Division of said District.

I further certify this to be in return of the appeal allowed therein to the Supreme Court of the United States, and that the original citation is hereto annexed and returned herewith.

In testimony whereof I hereunto set my hand and affix the seal of said court at office in the City of Fort Smith, Arkansas, this August 8, 1917.

[Seal of the District Court, Western District of Arkansas, U. S. A.]

WM. S. WELLSHEAR, *Clerk.*

Endorsed on cover: File No. 26,093. W. Arkansas D. C. U. S. Term No. 626. Fort Smith & Western Railroad Company and Superior Savings & Trust Company, Trustee, appellants, vs. Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, U. S. District Attorney. Filed August 16th, 1917. File No. 26,093.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

FORT SMITH & WESTERN RAILROAD COMPANY AND THE SUPERIOR SAVINGS & TRUST COMPANY, TRUSTEE, APPELLANTS.
v.
ARTHUR L. MILLS, RECEIVER, ETC., AND J. VIRGIL BOURLAND, U. S. DISTRICT ATTORNEY.
} No. 626.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

MOTION BY THE UNITED STATES TO ADVANCE OR PLACE ON THE SUMMARY DOCKET.

Comes now the Solicitor General, and, in accordance with the provisions of section 5, rule 26, moves the court to advance the above-entitled cause for hearing on a day convenient to the court or to place the same on the summary docket.

STATEMENT.

The bill in this case was filed to enjoin the receivers of a railroad from increasing, on January 1, 1917, the pay of its employees so as to meet the requirements of the Adamson Law (Sept. 3 and 5, 1916, c. 436, 39 Stat. 721), and to enjoin the United States Attorney from prosecuting the receivers for not complying with that law.

15001—17

While not challenging the recent opinion of this court holding the Adamson Law valid, the bill alleges facts which, it is insisted, take the case out of the rule there established. It is insisted that the facts recited by the court as justifying the exercise of Federal power in passing the Adamson Law did not exist as to this particular railroad; that the earning capacity of this railroad is so limited that to require the increase in wages resulting from the application of the Adamson Law will be confiscatory. It is also insisted that there was no disagreement between this railroad and its employees; that a contract existed between them with which both were satisfied; and that, hence, to apply the Adamson Law would be to impair the obligation of contracts contrary to the Constitution.

The District Court denied the injunction, but an application is pending before this court for an injunction pending the appeal.

In order to insure a prompt enforcement of the penal laws of the United States and on account of the importance to the transportation companies of the country and their employees that these questions be settled without delay, it is submitted that the case should have an early hearing.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

SEPTEMBER, 1917.

○

FILED
SEP 24 1917
JAMES D. MAHER
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 191—.

No. [redacted]42

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

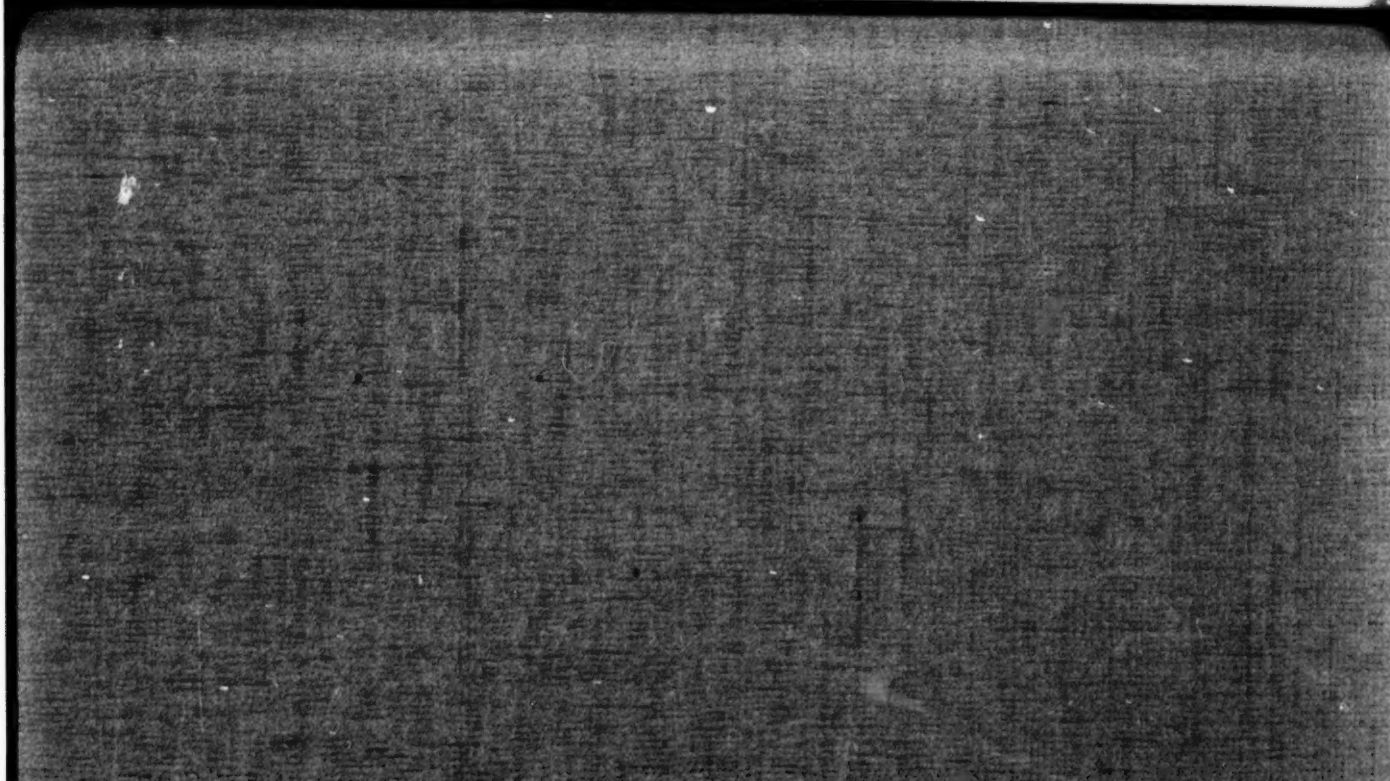
vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

MOTION AND RECORD BY STIPULATION.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.



In the Supreme Court of the United States

OCTOBER TERM, 191—.

No. ———

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

RECORD.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

INDEX.

In the Supreme Court of the United States:

Motion for Temporary Injunction..... 2
Affidavit in Support of Application for Restraining Order 3

In the District Court:

Petition for Injunction and Equitable Relief..... 6
Exhibit "A" 13
Exhibit "B" 13
Exhibit "C" 13
Exhibit "D" 25
Exhibit "E" 36
Exhibit "F" 49
Amended Motion to Dismiss Petition..... 61
Decree 63
Petition for Appeal..... 63
Affidavit 63
Assignment of Errors..... 66
Bond on Appeal..... 69
Memorandum Opinion 70

In the Supreme Court of the United States

OCTOBER TERM, 191—.

No. ———

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

Record of proceedings in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in the above entitled cause, begun July 14, 1917, and proceeding to final decree August 1, 1917, at the June Term, 1917, of said court, wherein pleadings were filed and proceedings had as hereinafter set out, together with motion for restraining order and supporting affidavit, viz:

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 191—.

No. ———

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

MOTION FOR TEMPORARY INJUNCTION.

Now come the Fort Smith & Western Railroad Company and The Superior Savings & Trust Company, as Trustee, appellants in the above entitled case, and respectfully represent to this court that this case was commenced on July 14, 1917, in the United States District Court, for the Western District of Arkansas; that defendant Mills duly entered his appearance in said case but filed no pleading, and defendant J. Virgil Bourland voluntarily appeared and filed motion herein to dismiss the bill of complaint; that said case came on for hearing on said motion, and said motion was granted, and thereupon on the 1st day of August, A. D. 1917, the said bill of complaint was dismissed; that appellants have appealed to this court from the judgment of dismissal, which appeal has been duly allowed by the said District Court.

Appellants respectfully move this court for a temporary injunction herein pending the hearing and decision of such appeal by this court.

FORT SMITH & WESTERN RAILROAD COMPANY,
AND
THE SUPERIOR SAVINGS & TRUST COMPANY,
As Trustee,
By A. C. DUSTIN, *Their Attorney.*

(Acknowledgment not printed.)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 191—.

No. ———

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR RESTRAINING ORDER.

State of Ohio,
Cuyahoga County, ss:

A. C. Dustin, being first duly sworn, deposes and says that he is now, and has been ever since June, 1903, the President and Treasurer of the Fort Smith & Western Railroad Company, and as such President and Treasurer had general charge and supervision of the business and finances of that Railroad down to the time of the appointment of the Receiver thereof in October, 1915; that affiant did the legal work in connection with the preparation of the mortgage and bonds on said property and sold and disposed of the bonds issued under said mortgage; that affiant has since the appointment of said Receiver been acting as attorney for the Bondholders' Committee organized by the bondholders for protection of their interests in the property of the Fort Smith & Western Railroad, and is likewise a member of such Committee and has been in receipt monthly of reports made and prepared by the proper officials of the Company and of the Receiver in accordance with the requirements of the Interstate Commerce Act; and affiant says that he is thoroughly familiar with the affairs of said Railroad and that the statements in respect to the amount invested in said Railroad, the present value of the property of said Railroad devoted to the public service and the gross and net earnings, all as set forth in the Bill of Complaint filed in this case, are true.

Since the filing of the Bill of Complaint in this cause affiant has been furnished a copy of the report made to the Interstate Commerce Commission of the operations of the Fort Smith & Western Railroad for the month of June, 1917, and said report shows that the entire revenue of said Railroad for said month of June was $72,542.75 and the operating expenses for said month were $79,122.60, taxes $4,000.00 and rentals to other railroads for trackage $5,429.62, making for said month a deficit of $16,009.47, so that the amount of this deficit is to be deducted from the net income of $94,798.96 shown in Exhibit "A" attached to the bill as the income for the eleven months following June 30, 1916, making the actual net income for the full fiscal year of twelve months a little over $78,000.00, or only 1% upon the value of the property devoted to the public use.

Affiant further says that the operating expenses of the six months since January 1, 1917, were computed upon the actual outlay for wages and that if a new computation has to be made in accordance with the provisions of the Adamson Law that the amount of such net income will be reduced by whatever amount will have to be paid out, which amounts to approximately One Thousand Dollars ($1,000.00) per month.

Affiant further says that there has been in the employ of the Receiver since the 1st day of January, 1917, an average of 92 persons engaged in the operation of trains upon said Railroad in carrying on the business of Interstate Commerce; that about twenty-three of said employes during the period mentioned have left the service of the Receiver and are no longer in his employ; that many of said employes are without means or property, so that any payment made to them in the enforcement of the Adamson Law would be impossible of recovery back after the final hearing of this case, and that in any event the attempt to recover would involve large expense and litigation and a multiplicity of suits.

Affiant further says that owing to the meagre amount of net earnings the Receiver of the property has had little or no credit and that the bondholders themselves were forced to organize a committee for their protection and for the protection of the property and that all the Receiver's Certificates that have been issued, of which there are now outstanding about $375,000.00, have with one exception been forced to be taken by the bondholders themselves, or upon the guarantee of the Bondholders

Committee, and that in the one exception mentioned the Receiver's Certificates were issued in partial payment for equipment purchased necessary for the operation of said property, and the additional burden placed upon the operation of said property by the Adamson Law is a very serious one and is quite likely to materially interfere with the further operation of the property.

Affiant further says that the Receiver in this case was no party to the arrangement under which test case of *Wilson vs. New*, 243 U. S., 332, was instituted and did not know of the institution of the said suit until after the same was started; that the wage agreements made between the Receiver and the officers of the unions to which the train employes of the Railroad belonged were made in good faith without any intent or purpose to violate the provisions of the Adamson Law, so-called, and have been faithfully lived up to and observed by the said employes, and that there was not at the time of the institution of the said suit of *Wilson vs. New*, prior thereto or since any intention whatever on the part of said employes to leave the service of the Receiver, and that said employes, according to the information furnished to affiant by the said Receiver, within the last month, are satisfied with the wages that they are being paid by said Receiver, and that while they had the right under the terms of the contract upon serving thirty days' notice to terminate the contracts after July 31, 1917, no such notices have been in fact served, and according to the information of affiant said employes are desirous of continuing in the service of the Receiver and fully recognize that the wages that they are being paid are reasonable and fair and all that the Receiver can afford to pay.

Affiant further says that since the rendition of the judgment by the District Court herein, as shown in the record presented herewith, the defendant Bourland has caused to be issued six warrants for the arrest of said Receiver in the further effort to intimidate the Receiver and prevent the relief sought by the plaintiffs by the appeal which they have taken to this Court.

Further affiant saith not.

A. C. Dustin.

Sworn to by the said A. C. Dustin and by him subscribed in my presence this 14th day of August, A. D. 1917.

L. C. Wykoff,
Notary Public.

(Notary Seal)

PETITION FOR INJUNCTION AND EQUITABLE RELIEF.

(Filed in U. S. District Court July 14, 1917.)

The plaintiffs, The Fort Smith & Western Railroad Company and The Superior Savings & Trust Company, as Trustee, uniting herein for convenience, complaining of Arthur L. Mills, as Receiver, and J. Virgil Bourland, United States District Attorney for the Western District of Arkansas, say:

1. Plaintiff, The Fort Smith & Western Railroad Company is a corporation duly organized and existing under the laws of the State of Arkansas owning a railroad either in its own right or under leases controlled by it, extending from Fort Smith, Arkansas, to Guthrie, Oklahoma, and to Oklahoma City, Oklahoma, which is capable of and is used in the transportation of persons and property in interstate commerce, and said The Superior Savings & Trust Company is a corporation incorporated under the laws of the State of Ohio.

Defendant, J. Virgil Bourland, is the duly appointed, qualified and acting District Attorney of the United States, for the Western District of Arkansas, pursuant to appointment by the President and confirmation by the Senate of the United States, as provided by law, and as such officer of the United States is charged with the prosecution of violations of the Acts of Congress, including the Act of Congress hereinafter referred to.

Defendant, Arthur L. Mills, is the duly appointed, qualified and acting Receiver of all the property, rights and franchises of The Fort Smith & Western Railroad Company, having been appointed as such receiver on the 9th day of October, A. D. 1915, by the United States District Court, for the Western District of Arkansas, in a cause therein pending entitled The Superior Savings & Trust Company, complainant, vs. The Fort Smith & Western Railroad Company, in Equity, No. 254, and said Receiver on or about said date took possession of the property, rights and franchises of said railroad company and has ever since that date, and now is engaged as said receiver in the maintenance and operation of said property in interstate commerce.

2. The amount in controversy in this action, which is a civil action, exceeds, exclusive of interest and costs, the sum of Five Thousand Dollars ($5,000.00) and is a controversy arising under the Constitution of the United

States, in this, to-wit: Plaintiffs seek relief from the enforcement by the defendants of a certain Act of Congress passed September 2, 1916, hereinafter referred to, which violates the Fifth Amendment of the Constitution of the United States in that,

(1) It deprives plaintiffs of liberty and property without due process of law; and,

(2) The enforcement of said Act of Congress will confiscate the property of the plaintiffs for public uses without compensation.

3. Plaintiffs say that on or about said April 1, 1904, the plaintiff, The Fort Smith & Western Railroad Company for a valuable consideration, executed, acknowledged and delivered and filed, all in conformity with law, its mortgage deed wherein and whereby it conveyed to The Mercantile Trust Company of New York, all its property and franchises, as well the property then owned as any property which it might thereafter acquire, together with the income thereof, all as security for the payment of the principal and interest of an issue of seven thousand five hundred (7,500) first mortgage bonds of the par value of One Thousand Dollars ($1,000.00) each, due by their terms on April 1st, 1954, bearing interest at the rate of four per cent. (4%) per annum, payable semi-annually on the first days of April and October of each year.

That pursuant to the terms of said mortgage there was duly issued, certified and disposed of seven thousand (7,000) of said bonds, of the aggregate par value of Seven Million Dollars ($7,000,000) of which six thousand two hundred and forty (6,240) of said bonds were sold outright to bona fide holders for value, and seven hundred and sixty (760) of said bonds were used by the said The Fort Smith & Western Railroad Company as collateral security for money borrowed for the purchase of equipment and other proper purposes.

That on or about the....day of....., A. D. 19.., the Trustee under said mortgage having resigned, the plaintiff herein, The Superior Savings & Trust Company, was duly elected and became such trustee under said mortgage in succession to said Mercantile Trust Company, with all the powers and duties in said mortgage contained.

That said Fort Smith & Western Railroad Company did not pay interest on said bonds as required by the terms thereof, but has been in default thereof since the first day of October, 1907, and said The Superior Sav-

ings & Trust Company on or about the 9th day of October, A. D. 1915, because of said default filed in the United States District Court, for the Western District of Arkansas, its petition for the foreclosure of said mortgage and for the appointment of a receiver, wherein defendant, said Arthur L. Mills, became receiver as hereinbefore set forth.

Plaintiffs further say that there is due upon the bonds secured by said mortgage and unpaid, upwards of Nine Million Dollars ($9,000,000), and that the receiver during the operation of said property has incurred obligations and issued receiver's certificates therefor, part of which have been used for the acquisition of equipment for the operation of said property, and part of which have been used for operating expenses and taxes in the aggregate amount of upwards of Three Hundred and Twenty-five Thousand Dollars ($325,0000).

That there has been by the said Fort Smith & Western Railroad Company, and by its said receiver invested in the said railroad, and the equipment thereof, an aggregate amount, including interest accrued and unpaid on said bonds approximately Nine Million Dollars ($9,000,000) and the physical property in the possession of said Receiver is of a value much in excess of Seven Million Dollars ($7,000,000) and the owners of said property should justly earn a fair and reasonable return on said valuation, to-wit: at least six per cent. (6%) or a minimum of Four Hundred Twenty Thousand Dollars ($420,000) per year over and above operating expenses, taxes and rentals. No dividends have ever been paid upon the capital stock of the Company and no interest upon the bonds of the Company above described since October 1, 1907.

4. Plaintiffs further say that both prior to and during said receivership the business of the Fort Smith & Western Railroad Company was conducted honestly and with the utmost care, skill and economy, and that no excessive or unreasonable salaries were, or are, paid to any officers or employes; that public necessity called for the building of said railroad in order that the people living and doing business in Fort Smith, Arkansas, and territory tributary thereto might have direct railroad connections westwardly across the State of Oklahoma, with the people living and doing business in Guthrie, Oklahoma, and Oklahoma City, Oklahoma, and said railroad serves a large number of villages and towns, some of which are solely dependent for transportation

on said railroad intermediate between the termini mentioned and said railroad passes through rich and valuable coal fields located in said State of Oklahoma about forty (40) miles west of Fort Smith, Arkansas, the output of which is dependent solely on said railroad for transportation to market; that owing to the provisions of the Constitution of the State of Oklahoma prescribing two (2) cents per mile for passenger rates and the competitive conditions prevailing generally with other railroads upon many of the commodities handled by said railroad and owing to the fact that a large part of the lands containing coal heretofore referred to is still held by the Choctaw and Chickasaw Nations of Indians, upon which no coal operations can be carried forward, the income of said railroad has been, still is, and will remain for some years to come, very small, and cannot be increased except as there shall be hereafter an increase in the amount and volume of said business through the development and growth of the country tributary to this railroad; that the gross and net earnings from the operation of said railroad for the last ten (10) fiscal years ending June 30th of each year and for the eleven (11) months of the present fiscal year ending May 31st, 1917, is correctly shown and set forth in Exhibit "A" hereto attached and which is hereby made a part hereof, and that any diminution of said net income would seriously add to the burdens of the operation of said property, would be unjust and further reduce the meagre earnings of said property, which are now many times less than they should be in order to afford a fair return upon the value of said property and the cost thereof.

5. Plaintiffs say that on or about the 2nd day of September, 1916, the Congress of the United States passed a certain Act, which was duly approved by the President, entitled "An Act to establish an Eight Hour Day for Employes of Carriers engaged in Interstate and Foreign Commerce," and for other purposes, a true copy of which Act is hereto attached as Exhibit "B" and made a part of this petition.

6. Plaintiffs further say that on or about the 30th day of July, A. D. 1916, all the employes engaged in the operation of trains for the transportation of persons and property in Interstate Commerce on said Fort Smith & Western Railroad, to-wit: The engineers, conductors, firemen and trainmen, through their proper agents and representatives, entered into contracts with the said Receiver, Arthur L. Mills, wherein and whereby they agreed

with said Receiver to perform services for said Receiver in the operation of such trains, coming within the duties of their respective positions for the period of one (1) year beginning August 1, 1916, which contracts as originally drafted were printed and as so printed are hereto attached as Exhibits "C," "D," "E" and "F." Said exhibits truly express the contracts aforesaid, except that they were amended and supplemented by agreements made on or about the same date, wherein it was provided that the schedules set forth in said exhibits should remain in effect for the full term of one year, subject to modification thereafter on thirty (30) days notice.

7. Plaintiffs further say that neither said employes nor the organizations to which they belong, prior to, at the time of, nor since the passage of said Act of Congress have made demands upon the said receiver contrary to said contracts, nor have they left, nor do they propose to leave the employ of said receiver, nor to strike, or to violate said contracts, but on the contrary the said employes have remained and continue now in the employ of the Receiver and propose to and desire to carry out said contracts according to the terms thereof; that there has been since the date of said contracts and is now no dispute between said receiver and his said employes as to wages or as to hours or character of service, and no disagreement in respect to the same; that said employes ever since the making of said contracts have been and now are engaged in the proper and peaceful performance of their duties under said contracts and have been operating the trains of the Fort Smith & Western Railroad in Interstate Commerce and giving to the public due and proper and adequate service, and there has been no complaint in respect to the same, and the public have not been in any manner discommoded, nor has the transportation of interstate commerce been interfered with in any respect whatsoever, nor is there any disposition or desire on the part of said employes to leave the service of said receiver, or to in any manner inconvenience or interfere with the transportation of passengers or freight in interstate commerce, but on the contrary the most harmonious relations exist between said receiver and his said employes, who have been ever since the date of said contracts paid in accordance with said contracts and said employes are anxious to abide by and in all respects perform the terms of their said contracts.

8. Plaintffs further say that recently the said defendant, J. Virgil Bourland, as United States District

Attorney, under instructions from the Attorney General of the United States, as plaintiffs are advised, has made a demand upon the said receiver, the said Arthur L. Mills, that he violate his said contracts with said employes and that he substitute for the hours of service and wages prescribed by the said contracts aforesaid, the hours of service and wages prescribed by said Act of Congress, and has, as plaintiffs are advised and believe, threatened said receiver that unless he comply with said demand that he will proceed against said Arthur L. Mills to prosecute him as provided in the said Act of Congress, and that said Receiver has been by reason of the threats aforesaid, intimidated, and will unless restrained by this Court, violate said contracts, and out of the moneys in his hands received, or to be received by him as such receiver, from the operation of the said railroad in his care and the income thereof, or from money borrowed upon receiver's certificates, which will be made a lien ahead of said mortgage, all of which are covered by said mortgage, pay to said employes the wages prescribed by said Act of Congress which are much in excess of the wages earned and owing to said employes computed in the manner prescribed by their contracts, to-wit: approximately One Thousand Dollars ($1,000.00) per month.

9. Plaintiffs respectfully submit that Congress in the passage of said law was dealing with an emergency existing on many of the large railroads in the United States whereby through inability to agree upon hours and character of service and wages, great danger existed of interference with interstate commerce as carried on on such railroads, and that Congress did not and could not have intended that said law should be applicable to any railroad where in fact no such emergency existed, nor to any case where no dispute or controversy existed between the railroad and its employes, and plaintiffs aver and charge that if said Act of Congress shall be construed to apply to such situation as exists on the Fort Smith & Western Railroad, and as is contended by the defendant Bourland, that it constitutes an unwarranted, unnecessary, meddlesome and unconstitutional interference with the business of said railroad and deprives the said receiver and the said employes of the receiver of the liberty of contract, and impairs the obligations of contracts lawfully made.

Plaintiffs further charge that the disbursement of said sum of One Thousand Dollars ($1,000.00) per month

proposed to be made by said receiver to said employes covering the period of time from and after the 1st day of January, 1917, contrary to the express terms of the contracts aforesaid, because of the additional burdens placed upon said receiver deprives the plaintiffs of property, and property rights, and operates to confiscate the property of the plaintiffs contrary to the Fifth Amendment of the Constitution of the United States.

Wherefore, and by reason of the premises, plaintiffs pray that the said defendant, J. Virgil Bourland, as United States Attorney, be enjoined from taking any steps whatsoever to interfere with the operation of the said railroad, or to enforce the said Act of Congress, and the said defendant, Arthur L. Mills, be enjoined from making any payment whatsoever to the employes of the railroad in excess of the said contracts in this petition described; and that upon final hearing hereof, the said Act of Congress be held to be confiscatory and wanting in due process of law, and void as to The Fort Smith & Western Railroad Company, and its receiver, engaged in the operation of the railroad of said Company, and that a temporary restraining order be issued by this Court restraining the said defendants in the manner above stated, until the final hearing of this case upon the merits, and plaintiffs pray for all other proper equitable relief.

THE SUPERIOR SAVINGS & TRUST COMPANY, AND
THE FORT SMITH & WESTERN RAILROAD COMPANY,
By HOYT, DUSTIN, KELLEY,
McKEEHAN & ANDREWS,
Its Attorneys.
READ & McDONOUGH,
Solicitors for Plaintiff.

STATE OF OHIO,
CUYAHOGA COUNTY, SS.

J. J. Sullivan and A. C. Dustin, now come and being first duly sworn, depose and say: J. J. Sullivan that he is the President of The Superior Savings & Trust Company, and A. C. Dustin that he is the President of the Fort Smith and Western Railroad Company, plaintiffs in the foregoing action; that they have read the foregoing petition and that the facts therein are true, except

as to such facts as are stated on information and belief, and as to those facts, affiants believe them to be true.

J. J. SULLIVAN,
A. C. DUSTIN.

Sworn to by the said J. J. Sullivan and the said A. C. Dustin, and by them subscribed in my presence this 7th day of July, A. D. 1917.

R. C. DEAN,
Notary Public.

(Notary Seal)

EXHIBIT "A."

	Gross Income	Net Income	Deficit
1907.....	$ 727,006.80	$229,748.99	
1908.....	720,948.54	96,006.02	
1909.....	684,201.16		$43,606.77
1910.....	726,790.25	24,744.38	
1911.....	879,495.91	158,775.48	
1912.....	841,401.55	145,005.57	
1913.....	785,142.01	67,540.05	
1914.....	740,414.15		29,867.22
1915.....	671,035.40	17,069.64	
1916.....	733,992.23		45,426.88
11 months.	1,025,645.49	94,798.96	

EXHIBIT "B."

Adamson Law (not printed).

EXHIBIT "C."

AGREEMENT BETWEEN FORT SMITH & WESTERN RAILROAD, ARTHUR L. MILLS, RECEIVER AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS GOVERNING WAGES AND WORKING CONDITIONS OF ALL ENGINEERS EMPLOYED BY SAID RAILROAD, EFFECTIVE AUGUST 1, 1916.

ARTICLE 1.

Passenger Service.

Engineers in passenger service will be paid as follows:

Section 1. $4.40 per hundred miles, over one hundred miles, pro rata.

Sec. 2. Overtime per hour 44c. Road overtime will be computed on basis of fifteen miles per hour, and paid pro rata at mileage rates on basis of ten miles for each hour earned.

Sec. 3. On runs requiring two or more trips on same day, actual mileage will be allowed with minimum of one hundred miles for the day, and when relieved from duty at terminal between such trips, overtime will be computed for each trip separately.

One hundred miles or less will constitute a day.

ARTICLE 2.
Initial Terminal Delay.

When passenger engineers are delayed within the terminal as much as one hour beyond the time set that they are ordered to report at their engines, they will be paid one hour overtime, at overtime rates; one hour and thirty minutes constitutes two hours, etc. If road overtime is made on same trip initial overtime will be deducted.

Passenger engineers initial terminal delay stops when train leaves initial station.

ARTICLE 3.
Final Terminal Delay.

When passenger engineers are delayed thirty minutes or more after arriving at terminal station, they will be paid at overtime rates one mile for each six minutes so delayed. Their time to start when train stops at terminal station and end when engineer has inspected his engine and reported such work, and relieved from all duty.

ARTICLE 4.
Freight Cars in Passenger Trains.

When freight cars are handled on passenger trains, engineers will receive one hour overtime, excepting when required to switch out or spot cars, two hours will be allowed. Passenger engineers required to handle freight cars in switching out passenger equipment will be allowed one hour overtime for such work.

These allowances to be arbitrary independent of other time earned.

Examples.

No. 1. If No. 4 handles a car loaded or partly loaded with any kind of animals and other show paraphe-

nalia, and no part of the car used for the purpose of carrying passengers, except those that are in charge of the contents of the car, this is to be considered as handling freight cars in passenger trains.

No. 2. If No. 4 handles a car partly loaded with animals or show paraphernalia, and the other part used for the purpose of carrying passengers connected with the show, this to be considered passenger equipment, unless passenger engineer is required to spot car.

ARTICLE 5.
Turning Engine or Train or Switching Train.

Passenger engineers required to switch their train or turn their engine or any part of their train before their day's work begins, or after it is completed, will be allowed one hour overtime for such service.

ARTICLE 6.
Local and Mixed Service.

Engineers in local freight and mixed train service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, 5.35 cents per mile; overtime 53½ cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, 5.60 cents per mile; overtime 56 cents per hour.

ARTICLE 7.
Through Freight Service.

Engineers in through freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, 5 cents per mile; overtime 50 cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, 5.25 per mile; overtime 52½ cents per hour.

ARTICLE 8.
Overtime.

Engineers in through freight, local and mixed train service: One hundred miles or less, ten hours or less, constitutes a day; road overtime will be allowed on basis of ten miles per hour. On runs of less than one hundred miles, road overtime and final delay at terminal will be paid after ten hours service.

ARTICLE 9.
Initial Terminal Delay.

When freight engineers are delayed within the terminal as much as one hour beyond the time set that they are ordered to report at their engines, they will be paid one hour overtime, at overtime rates; one hour and thirty minutes constitute two hours, etc. If road overtime is made on same trip, initial overtime will be deducted.

Freight engineers initial terminal delay stops when train leaves initial yards.

ARTICLE 10.
Final Terminal Delay.

When freight engineers (not including work train or switch engineers), are delayed thirty minutes or more after arriving at their terminals, they will be paid at the overtime rates; thirty minutes to constitute the first hour, one hour and thirty minutes two hours, etc. Their time to start when they arrive at the switch leading from main line into yard and shall end when engineer has inspected his engine and reported such work and relieved from all duty.

On runs less than one hundred miles, payment for final delays, except passenger engineers, will not be made until after ten hours service.

ARTICLE 11.

More Than One Class of Service in One Trip.

When engineers in any class of service perform more than one class of service in the trip, they shall be paid the highest rate of pay for the class of service performed on the trip.

Engineers in through freight or work train service required to load or unload stock, or to do station switching, will be paid local pay for the trip.

ARTICLE 12.
Through Freight, Setting Out, Picking Up and Weighing Cars.

Engineers in through freight service delayed at any one station thirty minutes or more, picking up or setting out, or weighing cars, will be paid the actual time consumed in doing this work in excess of all other mileage made. Under thirty minutes no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for local freight service for the same trip, the latter will apply.

This rule does not in any way conflict with the Engineers schedule governing two classes of service performed in one trip.

ARTICLE 13.
Work Train Service.

Engineers performing work train service will be paid as follows:

$4.50 per hundred miles or less, ten hours or less constitutes a day's work and all over ten hours to be paid at overtime rates, 45 cents per hour.

ARTICLE 14.
Initial and Final Terminal Delay.

No initial overtime will be allowed work train and switch engineers. Their time to start at the time they are ordered to report at their engine.

When work train and switch engineers are used beyond the ten hours service (not including the meal hour) they will be paid at overtime rates on the minute basis; less than five minutes not to be counted. Their time to end when relieved from all duty.

ARTICLE 15.
Switch Engine Service.

Engineers performing switch engine service will be paid as follows:

Fort Smith switch engine, $4.00 per day, at all other points, switch engine, $4.25 per day; ten hours or less constitutes a day. Over ten hours will be counted overtime pro rata at 40c per hour at Fort Smith and 42½ cents per hour at all other points.

ARTICLE 16.
Meal Hour on Switch Engine.

Switch engineers will be allowed one hour for dinner between hours of 11:30 a. m. and 1 p. m., and 11:30 p. m. and 1 a. m. This hour not to be included in the ten hours service. If not allowed one full hour within the given time, they will be paid for the hour in addition to any other time allowed.

ARTICLE 17.
Switch Engines Beyond Yard Limits.

When switch engineers are required to make movement beyond yard limit board, or from one station to another, in either case it will be understood that the rules governing service performed will apply. This rule does not apply between McCurtain and Panther.

GENERAL REGULATIONS.

ARTICLE 18.
Computing Overtime, Double Pay.

When computing overtime, except where otherwise stated, the first thirty minutes will be counted as one hour, and additional overtime for each succeeding hour will be allowed.

Under no circumstances will the Company pay double time for the same service except where otherwise provided.

ARTICLE 19.
Doubling Hills.

When engineers are compelled to double hills they will be allowed ten miles for each double. If road overtime is made on same trip, one hour will be deducted for each double. This same Article applies when engineers push other trains over hills or into stations.

ARTICLE 20.
Light Mileage.

Engineers running engines light with or without caboose shall be paid for the class of service that causes such mileage.

ARTICLE 21.
Deadheading.

Engineers deadheading under Company's orders shall receive one-half pay for the service they represent.

ARTICLE 22.
Towed or Deadheaded to Terminal.

Engineers tied up for rest under the law and then towed or deadheaded into the terminal with or without engine, will be paid the same as if they had run the engine to such terminal.

ARTICLE 23.
Coaling Up and Watching Engines.

Engineers required to coal up or watch engines, will be paid per hour at overtime rates. This to be arbitrary allowance.

ARTICLE 24.
Breaking in Engines.

Engineers breaking in engines will be paid according to through freight rates.

Engineers will perform this service.

ARTICLE 25.
Ordered Out and Not Used.

When engineers are ordered out and not used on account of trains annulled or otherwise, they shall receive one-quarter day's pay. If held more than two and one-half hours and less than five hours they shall be paid one-half day's pay.

If more than five hours they shall be paid for one day for such service which they were called.

ARTICLE 26.
Attending Court.

Engineers attending court at the request of the Company will be paid the same rate as they would have made had they remained on their run, and if away from home station, will be allowed legitimate expenses. Extra engineers not assigned will receive $5.00 per day and expenses as above.

Engineers attending court will receive their voucher without any unnecesary delay.

ARTICLE 27.
Deadheading Engines.

Engineers in charge of deadhead engines will be paid according to through freight rate pay.

ARTICLE 28.
Station Switching.

Engineers called to do station switching at any place where there is not a regular assigned switch engine, engineers will be allowed local pay as per Article governing local rates.

ARTICLE 29.
Regular Assigned Mileage.

Engineers on regular assigned runs, if for any cause except their own do not reach their terminals or are turned around before reaching terminals, will be allowed their regular assigned mileage.

ARTICLE 30.
Piloting.

A pilot, if available, will be furnished on light engines. When foreign trains are detoured over the Fort Smith & Western Railroad, an engineer, if available, will be furnished as a pilot. Engineers performing such service will be paid for at the rate of service corresponding to train pilot.

ARTICLE 31.
On Duty.

Engineers will be considered on duty until they have inspected their engines and reported such work as is needed. Engineers will be relieved of making pit inspection.

ARTICLE 32.
Continuous Time on Turn Around Runs.

On all turn around runs continuous time will apply. If tied up on account of the service law the time the engineer consumes in taking his required rest will be deducted. This rule does not apply to turn around out of Oklahoma City and Sparks.

ARTICLE 33.
Tied Up Before Reaching Terminal.

Engineers in regular assigned freight service will not be tied up away from their terminal until the expiration of 15 hours and 30 minutes service, and if tied up away from terminal their time to start at the expiration of their required rest.

ARTICLE 34.
Work Train Tied Up Away and at Home Terminal.

Engineers in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period will begin at midnight following the tie up period.

When work train engineers are tied up at home terminal twenty-four hours, and it is apparent the work train will be idle for a longer period than twenty-four hours, except Sundays or holidays, engineer will be allowed to return to the extra board or to any run his seniority entitled him to. Home Terminal of work train will be considered at Weleetka.

Engineers in Extra or Unassigned Service Held Away from Home Terminal.

Engineers in pool freight and in unassigned service held at other than home terminals, will be paid continuous time for all time so held after the expiration of twenty-two (22) hours from time relieved from previous duty, at the rate per hour paid him for the last service performed. If held fourteen (14) hours after the expiration of the first thirty-two (32) hour period, he will be paid continuous time for the next succeeding ten (10) hours,

or until the end of the twenty-four (24) hour period, and similarly for each twenty-four (24) hour period thereafter. Should an engineer be called for duty after pay begins, his time will be computed continuously.

Home terminal for extra and unassigned engineers will be at Fort Smith.

ARTICLE 35.
Miscalling of Engineers.

Engineers who are not called for runs that they are entitled to, will receive pay the same as if they were called.

ARTICLE 36.
Terminal of Runs.

An engineer is understood to have reached the terminal of a trip on any division when he reaches the division terminal at which engine crews of train are usually changed, or of a train to which the trip is made, and having done so and proceeds further with the same train, or being sent out on another trip or train, he is in either case understood to have begun another trip. This only applies to regular assigned runs.

The terminal of regular assigned runs will begin on the same date the time table takes effect and date runs take effect.

ARTICLE 37.
Calling.

Engineers will be called at all terminals not more than one hour and thirty minutes before time ordered to report for duty.

ARTICLE 38.
Hostlers.

Hostlers will not be allowed to do switching, such as is performed by switch engineers and other irregular or local freight engineers.

ARTICLE 39.
Work on Engines and Fines.

When engineers are required to do work on their engine when away from roundhouse points, they will be paid for such work at hourly rates.

Engineers will be relieved of the care of headlights and filling of grease cups where engines are dispatched from points where an engine force is maintained.

No fines will be imposed upon engineers for loss of or breakage of tools, for damage by accident to rolling

stock on the road, or for stock killed or injured. Engineers agree to use their best efforts to avoid accidents and damages as far as possible.

ARTICLE 40.
Time Slips Not Allowed.

When the engineer's time slips are not allowed, the Chairman of the Engineers' Committee will be notified within ten days from the end of the pay period, and if he is not notified, slips will be allowed as turned in.

Engineers tie up will be checked from the roundhouse register. They will not be required to get conductor or yardmaster to O. K. their time slips. Time checks will be issued for all amount of shortage of time.

ARTICLE 41.
Physical Requirements.

Engineers in the service of this Company where they are examined for color perception, acuteness of vision or hearing, should the indoor test disclose a deficiency of perception, a field test shall be conducted in the following manner

For vision: With the flags, lamps and signals used in the daily operation of trains, with or without glasses at a distance not to exceed 2,000 feet. For the correct observation of semaphore arms and lights, and of lamp or flag signals.

For hearing: Ability to hear ordinary conversation and air whistle signals under service conditions, the results of which shall determine the standing of the person examined.

The Engineers' Committee will be present when such tests are being made.

ARTICLE 42.
Sunday Away From Home.

Engineers assigned to regular runs with Sunday lay-overs away from home terminal, will be notified if required for service Sunday. If no notice is received, may absent themselves until time for their regular run Monday. If notified and not used will be paid a minimum day.

When engineers have to change on the road in order to catch their regular runs on account of trains not running on holidays, it shall be arranged, if possible, to make the change so that the men will be at their home terminal for the holidays. The oldest engineer to have the preference in the changing.

ARTICLE 43.
Promotion.

One engineer shall be hired for each two firemen promoted. Should it become necessary to reduce the number of engineers on account of slack business, those who have been promoted from the ranks of firemen will take such position as their seniority as firemen will entitle them to, and will again resume their ranks as engineer in turn when necessary to increase the number of engineers, provided they will take service as such when called upon. Engineers who have been hired will return to service in turn, providing they keep the Master Mechanic advised of their whereabouts and report for duty within fifteen days after having been notified to do so.

ARTICLE 44.
Bulletin of Permanent Vacant Runs.

All permanent vacant runs or new runs will be bulletined for a period of five days as soon as made vacant or established. An engineer deprived of his regular run for any cause shall by application to the Master Mechanic take a run within five days if entitled to one, or remain on the extra board list until another run of his choice is open. The bulletins to all runs shall be closed at 3 p. m. on the fifth day.

Engineers absent during the bulletin period will be allowed five days after returning to duty to bid thereon.

ARTICLE 45.
Extra Engineers.

Extra engineers will run first in and first out, except when an extra engineer catches an engine or a run he will hold it for a period of fifteen days unless relieved by a regular assigned engineer. This rule does not apply to passenger service.

Regular assigned extra engineers shall have preference to road work over emergency engineers.

ARTICLE 46.
Temporary Vacancy in Passenger Service.

Temporary vacancy in passenger service will be filled by the senior regular assigned freight engineer in the terminal at the time the vacancy occurs. The senior regular assigned freight engineer will have right to such vacant runs at any time he becomes available, and makes application for the same. After the run is vacant for thirty days or longer and the run thus made vacant is

preferred to other passenger runs by reason of hours, relay or pay, the senior engineer in passenger service making the application will be assigned to said run in preference to the regular run he may then hold.

ARTICLE 47.
Temporary Vacancy in Freight Service.

When preferred freight runs have been vacant fifteen days or more senior engineer making application for such vacancy will fill it.

ARTICLE 48.
Discipline.

Engineers will not be suspended, given demerit marks or discharged from the service except for good and sufficient cause, and in case an engineer is suspended pending investigation, he shall be notified, and a decision rendered within five days. If an engineer considers that he is unjustly suspended, he may, within ten days after the receipt of such statement, be given a fair and impartial hearing before a Board of Inquiry, consisting of the Superintendent, Trainmaster, Master Mechanic or the Traveling Engineer. Two or more of the above constitutes such a Board. (Both Mechanical and Transportation Department being represented.) At which hearing he shall have the right to have any other engineers of his own selection, who shall be in the employ of the Company, no other person, than those constituting the Board of Inquiry, and the disinterested engineer will be permitted to question witnesses. In case he is dissatisfied with the decision of the Board of Inquiry, he will have the right of ten days appeal to the General Officers, who will grant a hearing within ten days, intention being that ten days will be given each ranking officer to whom the appeal is made. If found innocent, he will be paid for the time off. The Committee handling such cases will be permitted to see investigation papers pertaining to same in the Superintendent's or Trainmaster's office.

When an engineer resigns or is discharged, he shall be furnished service letter within ten days of resignation or dismissal.

ARTICLE 49.
Engineers' Committee Handling Grievances.

No grievance will be entertained unless presented in writing to the Master Mechanic within ten days after its occurrence by the engineer or engineers' local Com-

mittee. Engineers shall have the right to appeal to the next ranking officers, provided such appeal is made in writing within ten days after the Master Mechanic has rendered his decision to the engineer or the Engineers' Local Committee.

No committee, other than that of the Engineers, will handle adjustment matters pertaining to engineers.

ARTICLE 50.

No change in the foregoing rates, rules and regulations will be made without thirty days' notice being given to either party.

FORT SMITH & WESTERN RAILROAD,
A. L. MILLS, *Receiver.*

For the Engineers:

M. J. MILLER, *Chairman.*

EXHIBIT "D."

AGREEMENT OF WAGES AND WORKING CONDITIONS BETWEEN FORT SMITH AND WESTERN RAILROAD, ARTHUR L. MILLS, RECEIVER, AND ORDER OF RAILWAY CONDUCTORS OF AMERICA, EFFECTIVE AUGUST 1, 1916.

ARTICLE 1.

All trips to be credited to the day on which they begin.

ARTICLE 2.

Passenger.

Sec. A. On runs of less than 4,000 miles per month, $135.00.

Runs of 4,000 to 5,000 miles per month, $155.00.

Runs of 5,000 to 6,000 miles per month, $165.00

Over 6,000 miles per month to be paid in overtime at the rate of $2.75 per 100 miles.

All other overtime to be paid at the rate of 40 cents per hour.

Road overtime to be computed on a basis of 15 miles per hour.

Sec. B—When required to handle freight cars in passenger trains, conductors will be allowed one hour overtime for each cut handled; if more than one destination, one hour will be allowed for each destination.

Conductors will be allowed overtime when required to switch or turn trains, or engines, before leaving or af-

ter arrival at terminal, with a minimum of one hour for such service.

When doing wrecking or work train service, at wrecks or wash outs, will be allowed overtime for such time in addition to mileage or days made in regular service.

Sec. C—A white brakeman or flagman will be employed on all passenger trains.

ARTICLE 3.

Special Passenger and Excursion Train Service.

Sec. A—Conductors will be paid 3.3 cents per mile, 175 miles or less to constitute a day. In computing overtime in extra passenger and excursion train service, the trip in each direction will be computed separately, and the time off duty at turn around point will not be used in computing overtime, except when the return trip is made without a full rest period, in which case the mileage both ways will be counted as one trip, and all time at turn around point will be used in computing overtime.

Sec. B—The oldest freight conductor available will be given preference in extra passenger work, and on special passenger, or excursion trains, when regular extra passenger conductor is not available for such service.

ARTICLE 4.

Through and Irregular Freight Service.

Sec. A—Conductors in through or irregular freight service will be paid at the rate of $4.20 per hundred miles, one hundred miles or less, ten hours or less, to constitute a day, overtime pro rata.

Road overtime will be allowed on a basis of ten miles per hour, actual minutes to be counted in computing overtime.

Sec. B—Conductors in through freight service delayed at any one station thirty minutes or more, picking up, setting out, or weighing cars, will be paid the actual time consumed in doing this work, in excess of all other mileage or time made; under thirty minutes no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for a local freight service for the same trip, the latter will apply. This rule does not in any way conflict with clause governing two classes of service performed on one trip.

Sec. C—When conductors perform more than one class of service in one trip, they will be paid the highest rate of pay for the class of service performed on the trip. Conductors in through freight or work train service required to load or unload stock, or to do station switching, such as spotting cars, and such work as is performed by a local freight, will be paid local pay for the trip.

ARTICLE 5.
Mixed Trains.

Conductors in charge of mixed trains will be paid at regular local rate of pay.

A mixed train is construed to mean a train regularly handling both freight and revenue passengers, with or without passenger equipment.

A freight train handling dead head passenger equipment will not be considered a mixed train under this article.

ARTICLE 6.
Local or Way Freight Trains.

Conductors on all local or way freight trains will be paid $125.25 per calendar working day month, one hundred miles or less, ten hours or less, to constitute a day; overtime pro rata.

When business is heavy on local or way freight trains, the Chairman of Committee will confer with proper official, and if shown that three brakemen are needed they will be placed on trains.

ARTICLE 7.
Work Train Service.

Sec. A—Conductors in charge of work trains will be paid at the rate of $4.38 per day, 100 miles or less, ten hours or less, to constitute a day, excess mileage and overtime pro rata.

Work train is construed to mean one handling company material, or engaged in wrecking service. Conductors in work train service will be paid for legal holidays, New Years Day, Fourth of July, Thanksgiving Day and Christmas Day.

It is not the intention to use work train crews on these days, but in case they are used they will be paid for service performed, in addition to regular work train day.

Sec. B—When conductors of work trains are required to act as foremen, or to take charge of ditchers,

they will be paid $30.00 per month additional for such service. The Company reserves the right to select such men as may be considered most capable, from the ranks, for such work. And to send the conductors so selected from one division to another, within the territory of their Superintendent. Conductors so selected will retain their rights on the district to which they belong, and will acquire none on the other districts.

Sec. C—When work trains are required to pick up a train not connected with work train service, or to do switching, at any station, except to pick up cars connected with work train service, will be paid highest rate of pay for service performed, for the day or trip.

Sec. D—Conductors in work train service held at other than home terminals, will be allowed a minimum day at the rate of service last performed, for every twenty-four hours so held. The twenty-four hour period to begin at midnight following the tie up period.

When it is apparent that work train crews will be idle for longer periods than twenty-four hours at the home terminal, except Sunday and holidays, they will be relieved and used in other service.

Home terminal of work trains will be at Weleetka.

Article 8.
Yard Service.

Sec. A—Yard masters will be paid $100.00 per calendar working day month, for day service, and $110.00 per calendar working day month for night service. Overtime pro rata, ten hours or less to constitute a day.

Engine foremen will be paid 38 cents per hour for day work, and 39 cents per hour for night work with a minimum of ten hours service per day, Sundays not included.

Sec. B—Conductors will be given preference as yard masters and engine foremen, same as runs on road, according to their seniority, and such vacancies bulletined, and men assigned in same manner as runs on road.

Sec. C—Meal hour for yard men in day service will be from 11:30 a. m. to 1 p. m., and from 11:30 p. m. to 1 a. m. for night service.

Engines working a ten hour period beginning at midnight or noon, will have one hour for meals between 5:30 and 7 o'clock.

ARTICLE 9.
Terminal Detention.

Sec. A—Initial terminal delay will start from the time the train men are ordered to report for work.

Conductors will report far enough in advance of this time to see that they have all of their supplies but not to exceed thirty minutes.

When conductors are delayed within the terminal as much as one hour beyond the time they are ordered to report for work, they will be paid one hour overtime, at overtime rates. One hour and thirty minutes constitutes two hours, etc.

If road overtime is made on same trip, initial terminal delay will be deducted. Freight initial terminal delay stops when the train leaves initial yards.

Final Terminal Delay.

Sec. B—When conductors are delayed 15 minutes or more after arriving at their terminal, they will be paid at overtime rates on the minute basis. Less than 15 minutes not to be counted. Their time to start when they arrive at the switch leading from the main line into the yard, and will end when relieved from all duty. On runs of less than 100 miles payment for final delay, except on passenger, will not be made until after ten hours service.

ARTICLE 10.
Meals.

Conductors will not be required to go longer than six hours without eating, and will be allowed a reasonable time at a convenient place, despatcher to be notified.

ARTICLE 11.
Doubling Hills.

Ten miles will be allowed for each double, unless the double is more than ten miles, in which case actual miles will be allowed. No allowance will be made for doubling when less than ten hours or less than 100 miles have been made, for which ten hours or 100 miles have been allowed.

ARTICLE 12.
Overtime.

All overtime will be paid on the minute basis, less than five minutes not to be counted.

ARTICLE 13.
Tied Up Between Terminals.

Conductors in regular assigned service will not be tied up away from their terimnal until after the expiration of fifteen hours and thirty minutes service, and if tied up away from their terminal their time will start upon the expiration of their required rest.

ARTICLE 14.
Called and Not Used.

When a conductor is called and not used for any reason not his own, he will be paid as follows: If held for duty less than five hours and relieved he will receive one-half day at the rate of service called for, and stand first out. If held five hours and relieved he will be paid one day at the rate of service called for and stand last out.

ARTICLE 15.
Wrecking.

Local or through freight conductors doing wrecking enroute will be allowed work train pay for the time so consumed, with a minimum of one hour. In case of road overtime being made for the trip, time in wrecking will be deducted from road overtime, there being no double pay for this service.

ARTICLE 16.
Dead Heading.

Conductors dead heading under orders of the company will receive half pay for the class of service they represent.

ARTICLE 17.
Attending Court.

Conductors attending court at the request of the company will be paid the same rate as they would have made had they remained on their run, and if away from home will be allowed legitimate expenses.

Extra conductors will be paid at through freight rates of 100 miles per day, and expenses as above.

Conductors attending court will receive their vouchers without unnecessary delay.

ARTICLE 18.
Transportation for Goods.

When assignment, change of runs, or change of trains require conductors to move, they will be furnished free transportation for their families, and household goods, in so far as the law will permit.

ARTICLE 19.
Rest.

Conductors will not be required to go out when ey claim they need rest.

ARTICLE 20.
Brakemen Objected To.

When conductors make reasonable objections to akemen in writing, they will be changed to another ew.

ARTICLE 21.
Off of Division.

Conductors run off regular assigned subdivision will and first out for return to their home terminal, after riod of rest is up, in compliance with the hours of rvice law. Conductors not to be used off their as-gned subdivision for more than one trip, successively, cept in case of wrecks or wash outs. This not to apply chain gang crews.

ARTICLE 22.
Extra Board.

Sec. A—Crews not assigned to regular runs will run st in first out.

Extra Conductors: The oldest available man in oint of service will be entitled to first call, in case an tra conductor lays off, when reporting for duty, will turn to the car he had when laid off, providing the r is not being protected by a senior man, or the regu-r man has not reported for duty.

Sec. B—When business is not sufficient to warrant extra conductor, he will be permitted to hold a car as rakeman. It being understood that this will not con-ct with trainmen's contract.

When a conductor's extra board is maintained, the tra conductor will be permitted to relieve a conductor ho holds a car as brakeman, at any terminal.

Sec. C—When an extra or emergency car is put on, r an indefinite period, the oldest extra conductor will used, and will hold this car as long as it is in service ily except Sunday.

The car being tied up away from terminal will be fficient notice that the car will work next day. Should e car be run into terminal, and the crew is tied up. e chief despatcher or other officer will notify the con-uctor of the intention to work next day, otherwise the

car will be considered out of service, and the conductor will take his turn on extra board.

Sec. D—When conductors are displaced by a senior man, or a run is pulled off, conductors will be allowed five days in which to select a run, according to his seniority; if, after five days, no run has been selected, he will return to extra board and await another vacancy before being placed.

ARTICLE 23.
Written Instructions.

Instructions to conductors relative to handling of train or movement of cars, will be given in writing.

ARTICLE 24.
Hiring Conductors.

At least one conductor will be hired for each two brakemen promoted. In hiring conductors, those already in the service will be given preference.

ARTICLE 25.
Assigned Runs.

Conductors assigned to regular runs required to make extra trips, or perform other service, not included in their regular service, or assignment, will be paid in addition to their regular rate, for the extra service at the rate provided for such extra service.

ARTICLE 26.
Promotion.

Sec. A—All brakemen promoted, and conductors hired, will be considered extra conductors, and their seniority dates from date first trip was made, when it can be clearly shown that such promotion was regularly made. The promotion will be governed by record, character, merit and service.

Sec. B—Brakemen from other lines, or passenger brakemen, must have had two years experience as freight brakemen before being eligible to promotion.

ARTICLE 27.
Selecting Runs.

Sec. A—A new run put on, two hours or more change in time, ten miles or more change in mileage, ten dollars or more change in salary, change in terminal, or a change in class of service, will be considered a new run, and no runs will be bulletined except under the above conditions, or when a run is vacated.

Sec. B—Runs as above described, will be bulletined for a period of five days, and the oldest conductor bidding on a run will be assigned, and a run so selected will be held by him, until he is displaced by a senior man, the run is pulled off, or there is a vacancy to which he is entitled to, according to his seniority.

ARTICLE 28.

Sec. A—Conductors will not be granted leave of absence, for a longer period than ninety days, except in case of sickness, injury, or doing committee work, unless agreed to by Conductors' Committee, and the Superintendent, Chairman of Committee to be notified of all renewals.

Sec. B—Any employe of the railroad company covered by this agreement, entering the service of the Fort Smith & Western or any proposed extension, or the Order of Railway Conductors, and assigned to service connected with the above named road, will retain his rights on his division.

ARTICLE 29.
Discipline.

Conductors will not be disciplined without just and sufficient cause.

Discipline may be by dismissal, suspension, demerit marks, or reprimand.

Conductors will not be dismissed or suspended without an investigation, except for intoxication; and further excepting that he may be held out of service pending an investigation.

At the investigation he may be present together with a disinterested employe of his choice. If any conductor thinks his discipline unjust he shall have the right within twenty days to appeal his case by written statement to his Superintendent. In case he is dissatisfied with the decision of the Superintendent he shall have the right to, within twenty days after the receipt of the decision, appeal to the General Manager.

Investigations should be held within ten days from date of receipt of request, and decisions rendered, where practicable, within ten days after the investigation. If a conductor is dismissed or suspended, and this discipline, upon any of the above appeals is found to be unjust, he shall be returned to service and paid for time lost.

When conductors are given demerit marks, they shall be notified in writing, and shall have the same right to appeal as above. If the marks are found to be given unjustly, they will be removed.

ARTICLE 30.

Adjusting Grievances.

The Superintendent will listen to all complaints of committeemen, and provided notice is given of subject of complaint, when an early hearing will be given. No conductor will be discriminated against on account of being a member of any order, or for serving on any grievance committee.

A conductor discharged from the service of the company shall be entitled to a fair and impartial hearing before the board of inquiry, consisting of the officers of the railroad company and a member of his selection. At said hearing he or his representative will have the right to make inquiry of the facts, and in case he is not satisfied with the decision of the officer who issues the order for the discipline, he may, within ten days, make written statement to Superintendent and Chairman, who will promptly arrange for a hearing, at which the conductors will have a representative. The Superintendent may select any officers of the company to act with him as board of inquiry, who will give full hearing of the case and render decision promptly.

No one except the board of inquiry, and disciplined conductor, will be permitted to question the witness. In case he is not satisfied with the decision of the board of inquiry, he will have the right to appeal to the General Manager. In case of an appeal to the General Manager, the Chairman Adjustment Committee will be furnished with a stenographic copy of the proceedings of the board of inquiry.

Any employe may be dismissed without hearing, in case of intoxication while on duty.

In case a conductor is found innocent at any stage of the hearing, he shall be restored to his previous rank and paid for time lost.

ARTICLE 31.

This memorandum will govern all Superintendents, Train Masters, and other officers of the Fort Smith & Western Railroad, in the discipline and control of the conductors in the service of said company, and will con-

stitute a letter of introduction in all matters herein stated.

Hereafter, in the employing of conductors, officers of the company are hereby instructed to hire none but sober, reliable, and experienced men when available.

Conductors will be directly responsible to the orders of the Superintendent or Train Master at all times, in all matters pertaining to their duty. No other subordinate official will be permitted to interfere with the discipline or control of these employes.

ARTICLE 32.

The articles enumerated herein constitute in their entirety, an agreement between the Fort Smith & Western Railroad, Arthur L. Mills, Receiver, and its conductors, to take effect August 1st, 1916.

No departure from the provisions of this contract will be made by either party, until thirty days' notice has been given and served upon the other.

For the Railroad Company:
A. L. MILLS, Receiver;

For the Conductors:
W. E. CROUSE, *Chairman*,
G. H. FURLONG, *Vice Ch'm*,
C. W. SMITH, *Secretary*,
General Committee.

AGREEMENT COVERING OKLAHOMA CITY AND SPARKS TURN AROUND RUN.

Initial Delay.

Conductor delayed one hour from the time he is ordered to report for duty at Oklahoma City, or Sparks, will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc.

Final Terminal Delay.

Conductors delayed thirty minutes or more after arriving at the switch leading off the main line at Oklahoma City, or at the depot at Sparks, will be paid one hour overtime, at overtime rates; one hour and thirty minutes to constitute two hours, etc.

Road overtime to be computed on the basis of ten miles per hour. No road overtime will be allowed until after five hours and thirty-six minutes in each direction.

If road overtime is made initial overtime will be deducted.

Rules governing held away from home terminal will apply at Oklahoma City and Sparks; this rule does not apply to days run is not carded.

Mileage.

The mileage to be 56 miles in each direction, except No. 15 Monday and No. 16 on Saturday, when the mileage will be 100 miles; no overtime until after ten hours service.

When necessary for these trains to detour, the mileage made while detouring, and overtime rules will apply.

For the Railroad:

A. L. Mills, *Receiver;*

For the Conductors:

W. E. Crouse, *Chairman,*
G. H. Furlong, *Vice Ch'm,*
C. W. Smith, *Secretary,*
General Committee.

EXHIBIT "E."

AGREEMENT BETWEEN FORT SMITH & WESTERN RAILROAD, ARTHUR L. MILLS, RECEIVER, AND BROTHERHOOD OF RAILROAD TRAINMEN, GOVERNING WAGES AND WORKING CONDITIONS OF ALL TRAINMEN AND YARDMEN EMPLOYED BY SAID RAILROAD, EFFECTIVE AUGUST 1ST, 1916.

Article 1.
Passenger Service.

Section A—Passenger trainmen will be paid as follows:

Brakemen $81.05 per month.
Flagmen $81.05 per month.
Maximum miles 6,000.
Overtime Brakemen and Flagmen 27½c per hour.

Road overtime will be computed on basis of 15 miles per hour. This overtime to be computed separately for each part of trip.

Section B—Passenger trainmen will be allowed one hour overtime for each cut of freight cars handled. If more than one destination one hour will be allowed for each destination.

Passenger crews required to switch or spot freight cars at stations will be allowed one hour overtime.

These to be arbitrary allowances.

ARTICLE 2.

Extra Passenger, Special and Excursion Trains.

Trainmen will be paid in extra passenger, special and excursion trains as follows:

Brakeman and Flagmen 1.7c per mile.

175 miles or less, ten hours or less, to constitute a day.

All over 175 miles or ten hours will be paid pro-rata.

ARTICLE 3.

Passenger Trainmen Used on Layover Days.

Section A—A white flagman or brakeman will be placed on all passenger, special and excursion trains.

Section B—Passenger trainmen used on layover days will be paid for extra service performed in addition to regular pay.

ARTICLE 4.

Passenger Crews Turning Engines and Switching Trains.

Passenger trainmen required to switch or turn any part of train or engine will receive one hour overtime for performing such work.

ARTICLE 5.

Circus Trains.

Trainmen assigned to circus trains will be paid through freight rates and the time will be computed on basis of time and one-half and allowed as miles or hours, whichever amounts to the most, from the time ordered to begin work until tied up at an intermediate point or relieved at a terminal, it being understood that the trainmen assigned to this service may be tied up at any point. Such tie up will end the run and another day begins when placed on duty. A minimum of 150 miles will be allowed for all days while assigned to this service. No overtime will be allowed except on basis provided above.

ARTICLE 6.

Through Freight Service.

Trainmen in through freight service will be paid as follows:

Brakemen $2.80 per hundred miles.

One hundred miles or less, ten hours or less, to constitute a day, with overtime pro rata.

ARTICLE 7.

Time Consumed on Through Freight.

Trainmen in through freight service delayed at any one station thirty minutes or more picking up, setting out or weighing cars, will be paid the actual time consumed in doing this work in excess of all other time or mileage made.

Under thirty minutes no allowance will be made. If the compensation for through freight trip on the above basis exceeds that for local freight service for the same trip the latter will apply. This rule does not in any way conflict with trainmen's schedule governing two classes of service performed on one trip.

ARTICLE 8.

More Than One Class of Service On One Trip.

When trainmen in any class of service perform more than one class of service on the trip they will be paid the highest rate of pay for the class of service performed on the trip.

Trainmen in through freight or work train service required to load or unload stock or do station switching, such as spotting cars and such work as is performed by local freight will be paid local pay for the trip.

ARTICLE 9.

Initial Terminal Delay.

Initial terminal delay will start from the time the trainmen are ordered to report for work. Trainmen will report far enough in advance of this time to see that they have all of their supplies, but not to exceed thirty minutes.

When trainmen are delayed within the terminals as much as one hour beyond the time they are ordered to report for work they will be paid one hour overtime at overtime rates.

One hour and thirty minutes constitutes two hours, etc.

If road overtime is made on the same trip initial terminal delay will be deducted.

Freight trainmen's initial terminal delay stops when train leaves initial yards.

Final Terminal Delay.

When trainmen are delayed fifteen minutes or more after arriving at their terminal they will be paid at overtime rates on the minute basis. Less than fifteen minutes

not to be counted; their time to start when they arrive at the switch leading from the main line into yards and will end when trainmen are relieved from all duty.

On runs of less than one hundred miles payment for final delay, except passenger trainmen, will not be made until after ten hours service.

ARTICLE 10.
Crews Will be Reduced.

When the freight train traffic on any portion of the road is so reduced that through freight crews cannot make 2,700 miles per month and irregular crews 2,600 miles per month, a sufficient number of crews will be laid off, beginning with the youngest man, so that crews can make as near as possible as stated above.

ARTICLE 11.
Trainmen Required to Load or Unload Stock or Bridge Material, Etc.

Trainmen required to actually perform the work of bedding stock cars, loading or unloading stock or bridge material, will be allowed one hour overtime. If time consumed in performing this work amounts to one hour and thirty minutes, two hours will be allowed, etc.

ARTICLE 12.
Cables.

Trainmen on work trains will not be required to handle cables if section, extra gang or other men are available.

ARTICLE 13.
Chain Gang Crews.

Trainmen assigned to chain gang crews will run first in, first out.

ARTICLE 14.
Local and Way Freight.

Brakemen on way freight and mixed runs will be paid $83.50 per calendar work day month.

One hundred miles or less, ten hours or less, to constitute a day, with overtime pro rata.

ARTICLE 15.
Number of Brakemen on Local and Mixed Runs.

When business is heavy on local trains, the Chairman of Trainmen's Committee will confer with officials, and if shown that three men are needed they will be placed on trains.

ARTICLE 16.
Trainmen Not to Be Used On Layover Days Except in Emergency.

Trainmen assigned to local, mixed, through or irregular freight trains will not be used on layover days except in cases of emergency. If so used they will receive pay for class of service performed.

ARTICLE 17.
Work Train Service.

Trainmen in work train service will be paid as follows:

Brakemen $2.92 per day.

One hundred miles or less, 10 hours or less, to constitute a day.

Excess mileage and overtime to be paid at pro rata rates.

Work train is construed to mean one handling company material or engaged in wrecking service. Trainmen in work train service will be paid for legal holidays—New Years Day, Fourth of July, Thanksgiving Day and Christmas Day.

It is not the intention to use work train crews on these days, but in case they are used they will be paid for such service performed in addition to regular work train day.

Section B—Trainmen in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period to begin at midnight following the tie-up period. When it is apparent that work train crews will be idle for a longer period than twenty-four hours at home terminals, except Sunday and holidays, they will be relieved and used in other service. Home terminal of work train will be at Weleetka.

ARTICLE 18.
Water Cars.

Trainmen will not be required to fill more than two water cars at any one place, and not at all at terminals.

ARTICLE 19.
Relieving Firemen.

Trainmen will not be required to assist firemen in any duties except in cases of emergency. When a fireman becomes disabled, it will be expected of trainmen

to render all assistance in their power to enable train to reach destination or until relief firemen can be procured. When trainmen are so used they will be paid a minimum day at trainmen's pay and overtime made at time he relieved fireman, and a minimum day at firemen's pay. It is understood that trainmen are not experienced firemen but in general interests of the service will cheerfully render all assistance possible.

ARTICLE 20.
Rest.

Trainmen will not be required to go out when they claim they need rest.

ARTICLE 21.
Trainmen Will Not Be Tied Up.

Trainmen in regular assigned freight service will not be tied up away from their terminal until after the expiration of fifteen hours and thirty minutes service, and if tied up away from terminal their time to start upon the expiration of their required rest.

ARTICLE 22.
Towed or Dead-Headed Into Terminal.

Road trainmen tied up for rest under the law and then towed or dead-headed into terminal, with or without engine or caboose, will be paid the same rate as if they had run the train to such terminal.

ARTICLE 23.
Fraction of a Mile.

Any fraction of a mile less than .5 will not be counted. .5 and over to be counted as a mile.

ARTICLE 24.
Overtime.

All overtime will be paid on the minute basis; less than five minutes not to be counted.

ARTICLE 25.
Continuous Time On Turn Around Runs.

On all turn-around runs continuous time will apply. If tied up on account of the Service Law, time the trainmen consume in taking the required rest will be deducted.

This rule does not apply to turn-around out of Oklahoma City and Sparks.

ARTICLE 26.
Trainmen in Extra Unassigned Service.

Trainmen in pool freight and unassigned service held at other than home terminal will be paid continuous time for all time so held after the expiration of twenty-two hours from time relieved from previous duty, at the rate per hour paid for last service performed; if held fourteen hours after the expiration of the first thirty-two hour period they will be paid continuous time for the next succeeding ten hours or until the end of the twenty-four hour period and similarly for each twenty-four hour period thereafter. Should a trainman be called for duty after pay begins his time will be computed continuously.

Home terminal for extra and unassigned trainmen will be at Weleetka.

ARTICLE 27.
Yard Service.

Brakemen in yard service will receive pay as follows:

35 cents per hour, days.

37 cents per hour, nights.

10 hours or less to constitute a day.

Day engines will work between the hours of 6 a. m. and 6 p. m.

Night engines from 6 p. m. to 6 a. m.

Brakemen required to work any part of night hours will receive pay at night engine rates for such time.

Meal hour on switch engine will be from 11:30 a. m. until 1 p. m., and from 11:30 p. m. to 1 a. m. Brakemen who do not receive one full hour between above times will be paid for the meal hour and will receive in addition thirty minutes for lunch under pay.

ARTICLE 28.
Promotion.

For each conductor hired from ranks or elsewhere at least two oldest brakemen will be promoted. When such conductor is hired he will hold no rights as brakeman.

Brakemen will be promoted according to seniority.

ARTICLE 29.
Doubling.

Ten miles will be allowed for each double, unless doubling is more than ten miles, in which case actual miles will be allowed.

No allowance will be made for doubling when 100 miles or less or ten hours or less are made for which 100 miles is paid.

ARTICLE 30.
Called and Not Used.

When trainmen or yardmen are called and for any reason not their own, fail to be used they will be paid as follows:

If held on duty for less than five hours and relieved, they will be paid one-half day at rate called for and stand first out.

If held five hours and relieved they will be paid one day at rate of class of service called for and stand last out.

ARTICLE 31..
Closing Car Doors.

Trainmen will be relieved from closing empty car doors where car-men are on duty.

ARTICLE 32.
Assigned Crews Not Used.

Regular assigned crews when not used through no fault of their own will be paid a minimum day except in cases of washouts, wrecks or track otherwise obstructed.

ARTICLE 33.
Terminal.

No place will be considered a terminal before the date the time card goes into effect showing the new terminal.

ARTICLE 34.
Brassing Cars.

Passenger trainmen will not be required to brass cars except in cases of emergency.

Freight trainmen will not be required to brass cars except expedite freight.

ARTICLE 35.
Extra Board Cut.

Extra board will not be cut without consent of the Chairman of the Adjustment Committee.

ARTICLE 36.
Extra Board.

There will be one extra board maintained.

ARTICLE 37.
Eating.

Trainmen will not be required to go longer than six hours without eating and will be allowed a reasonable time at convenient place. Dispatcher to be notified.

ARTICLE 38.
Bulletin Board.

All bulletin boards will be revised at least once a year.

ARTICLE 39.
Time Slips Not Allowed.

When trainmen's time slips are not allowed, trainmen and Chairman of Committee will be notified within ten (10) days from each pay day period.

ARTICLE 40.
Shortage.

When shortage occurs in pay checks, time check will be issued at once.

ARTICLE 41.
Pilot.

All engines running light and all trains from foreign lines will be piloted when pilots are available. When conductor is not available the oldest competent brakemen in service will be used and he will receive conductor's rate of pay at through freight rates.

ARTICLE 42.
Sunday Lay-Over.

Trainmen assigned to regular runs with Sunday lay-over away from home will be notified if required for service Sunday. If no notice is received, may absent themselves for time of regular run. If notified and not used they will be paid a minimum day. When trainmen have to change on road on account of holidays it shall be arranged, if possible, to make the change so that the men will be at their homes for the holidays. Oldest men to have preference in the changing.

ARTICLE 43.
Coaling Engines.

Trainmen required to coal engines will be paid two hours overtime for each engine coaled. This to be an arbitrary allowance.

ARTICLE 44.
Rights.

Trainmen's seniority will apply in all classes of service.

ARTICLE 45.
Bulletin Runs.

In the future the Chairman of the Adjustment Committee will bulletin all vacant runs and make all assignments subject to the approval of Superintendent.

Trainmen will send copy of all bids on runs to Superintendent, marking on same "COPY."

ARTICLE 46.
Trainmen Laying Off.

Regular trainmen may lay off at any terminal. When he resumes work he will take his run at terminal where he was relieved, except if a regular trainman's run is held away from terminal for any cause the regular assigned trainman will be allowed to go to his run when he reports for duty.

Extra men can relieve emergency men at any point starting a new day.

ARTICLE 47.
Loading Cotton.

Train crews will not be required to load more than [illegible] bales of cotton at any one station, and these to be at cotton platforms.

ARTICLE 48.
Trainmen Assigned.

Trainmen will be assigned to runs according to seniority.

ARTICLE 49.
Runs Bulletined.

A new run put on, two hours or more change in time, ten miles or more change in mileage, ten dollars or more change in salary, change in terminal or a change in class of service, will be considered a new run and no runs will be bulletined except under the above conditions and when a run is vacated. When a man is displaced on an established run by reason of its being Bulletined in accordance with the above provision or by reduction of force, he will have the right to take any run his seniority will permit him to hold, provided he makes application for such run within five days from date of his dis-

placement, and failing to do so he loses all rights to displace his juniors and will be required to go to extra board until such time as there is another vacancy.

ARTICLE 50.
Applications Approved.

When a trainman has been in the service for a period of sixty days his application will stand approved.

ARTICLE 51.
Trainmen Dismissed.

Trainmen dismissed from the service will not be reinstated after a period of ninety days unless his case is pending in the hands of the Adjustment Committee.

ARTICLE 52.
Trainmen Giving Up Runs.

Trainmen giving up an assigned or closed run will go to the extra board.

ARTICLE 53.
Trainmen Laying Off.

Trainmen not having access to bulletins on account of sickness or leave of absence or other good and sufficient cause will, upon returning to service, have the right in accordance with their seniority to runs bulletined during such time.

ARTICLE 54.
Discipline.

Trainmen will not be discharged or otherwise disciplined without sufficient cause; in case trainmen believe they have been unjustly disciplined or discharged, they will have the right to make complaint in writing within ten days and shall, upon request of himself or a committee of trainmen, be granted a hearing by the proper officials within five days or as soon thereafter as practicable, at which hearing he may be present with any conductor, brakeman or yardman of his choice in the employ of the company, and present any witness or witnesses having knowledge of the facts. If dissatisfied with the decision of the official an appeal in writing may be made to Vice-President, General Manager or Receiver within thirty days from the close of the first hearing. In case he has been unjustly discharged he will be reinstated and paid for all time lost. If otherwise disciplined unjustly it will be corrected.

Article 55.
Leave of Absence.

Trainmen will not be granted a leave of absence for a period longer than ninety (90) days except in case of sickness, injury or doing committee work, unless agreed by Trainmen's Committee and Superintendent to give such trainman a longer leave of absence. Chairman of Committee to be notified of all renewals granted.

Article 56.
Supplying Cabooses.

Where car men are on duty trainmen will not be expected to supply cabooses with brasses, chains, switch ropes, knuckles, knuckle pins, air hose, frogs, packing, oil and waste or similar articles, or transfer supplies in cabooses except in cases of emergency.

At the end of each trip a requisition will be made out for all such supplies needed, and trainmen must know that all necessary supplies are on caboose before starting on the run and will procure anything that has been overlooked with the least possible delay.

Article 57.
Chaining Up and Handling Bad Order Cars.

Section A—Trainmen will not be required to chain up cars unless loaded with live stock or perishable freight except to get them to nearest available side track or to terminal if within reasonable distance.

Section B—Trainmen will not be required to couple or uncouple hose or test air where car men are on duty.

Article 58.
Fines.

Trainmen will not be required to pay fines for breakage, damage or clerical errors.

Article 59.
Attending Court.

Trainmen attending court at the request of the Company will be paid the same rate as they would have made if they remained on their run, and if away from home will be allowed legitimate expenses. Extra trainmen will be paid a minimum day at through freight rates and expenses as stated above. Trainmen attending court will receive their vouchers without unnecessary delay.

ARTICLE 60.
Deadheading.

Trainmen deadheading under company's orders shall receive one-half pay for the class of service they represent.

ARTICLE 61.
Trainmen Run Off Regular Runs.

Trainmen run off regular assigned subdivision will stand first out for return to their home terminal, after period of rest is up in compliance with the Hours of Service Act.

Trainmen not to be used off their regular assigned subdivision for more than one trip successively, except in case of wrecks or washouts. This not to apply to chain-gang crews.

ARTICLE 62.
Calling.

Trainmen coming in late, or needing rest, or getting out early, will, when they inform the operator or dispatcher, be called not more than one hour and thirty minutes before time to commence work. This to apply at terminals.

ARTICLE 63.
Trainmen Moving.

When it is necessary for a trainman to transfer from one division to another, said employee will be furnished free transportation for himself, family and household goods in so far as the law will permit.

ARTICLE 64.
Ice.

Trainmen will be furnished with sufficient amount of ice from March 1st to November 1st.

ARTICLE 65.
Service Letters.

When a trainman resigns or is discharged, he shall be furnished service letter within ten days of resignation or dismissal.

ARTICLE 66.
Seniority List.

The Chairman of Adjustment Committee of B. of R. T. will, upon request be furnished a seniority list showing the correct seniority of all trainmen employed by the railroad.

ARTICLE 67.
Preceding Articles.

The preceding articles herein constitute in their entirety an agreement between the Fort Smith & Western Railroad and their trainmen; same to take effect August 1st, 1916. No departure from the provisions of this contract will be made by either party until thirty (30) days notice has been served upon each other.

FORT SMITH & WESTERN RAILROAD,
A. L. MILLS, *Receiver.*
F. B. DICKOVER,
For the Trainmen and Yardmen.

EXHIBIT "F."

AGREEMENT BETWEEN FORT SMITH & WESTERN RAILROAD, ARTHUR L. MILLS, RECEIVER AND BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN GOVERNING WAGES AND WORKING CONDITIONS AFFECTING ALL LOCOMOTIVE FIREMEN EMPLOYED BY SAID RAILROAD, EFFECTIVE AUGUST 1, 1916.

ARTICLE 1.
Passenger Service.

Section 1. Firemen in passenger service will be paid as follows:

$2.65 per hundred miles or less; overtime 26½ cents per hour.

Over one hundred miles, pro rata.

Sec. 2. Road overtime will be computed on basis of fifteen miles per hour, and paid pro rata at mileage rates on basis of ten miles for each hour earned.

Sec. 3. On runs requiring two or more trips on the same day, actual mileage will be allowed, with a minimum of one hundred miles for the day and when relieved from duty at terminals between such trips, overtime will be computed for each trip separately.

Sec. 4. Passenger firemen delayed within the terminal one hour will be allowed one hour overtime, at overtime rates; one hour and thirty minutes to constitute two

hours, etc. The initial overtime to start from the time the fireman is ordered to report at the engine and ends when train leaves initial station.

Sec. 5. When passenger firemen are delayed thirty minutes or more after arriving at terminal station, they will be paid at overtime rates one mile for each six minutes so delayed. Final overtime to start when train reaches terminal station and ends when fireman is released from all duty.

Sec. 6. When freight cars are handled in passenger trains, fireman will receive one hour overtime, excepting when required to switch out or spot cars, two hours will be allowed. Passenger firemen required to handle freight cars in switching out passenger equipment will be allowed one hour overtime for such work.

These allowances to be arbitrary independent of other time earned.

Example No. 1. If No. 4 handles a car loaded or partly loaded with any kind of animals and other show paraphernalia, and no part of the car used for the purpose of carrying passengers, except those that are in charge of the contents of the car, this to be considered as handling freight cars in passenger trains.

Example No. 2. If No. 4 handles a car partly loaded with animals or show paraphernalia, and other part used for the purpose of carrying passengers connected with the show, this to be considered passenger equipment, unless passenger fireman is required to spot car.

Sec. 7. When passenger firemen are required to switch their train or turn their engine or any part of their train before their day's work begins or after it is completed, they will be allowed one hour overtime for such service.

Article 2.

Local and Mixed Freight Service.

Section 1. Firemen in local and mixed freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, $3.40 per hundred miles; overtime 34 cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, $3.60 per hundred miles; overtime 36 cents per hour.

Sec. 2. One hundred miles or less, ten hours or less, to constitute a day. Road overtime will be allowed on basis of ten miles per hour, on runs less than one hun-

dred miles, except passenger service, road overtime and final terminal delay will be paid after ten hours service.

Sec. 3. When firemen in freight service are delayed at the initial terminal, one hour, they will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc., the initial terminal delay to start at the time the fireman is ordered to report at the engine and ends when he leaves initial yards.

If road overtime is made on same trip, initial overtime will be deducted.

Sec. 4. When firemen in freight service, not including work train or switch engine firemen, are delayed at the final terminal thirty minutes, he will be allowed one hour overtime at overtime rates; one hour and thirty minutes to constitute two hours, etc., final terminal delay to start when fireman reaches switch leading from main line into yards, and ends when fireman is released from duty.

ARTICLE 3

Through Freight Service.

Section 1. Firemen in through freight service will be paid as follows:

On engines weighing less than 140,000 pounds on drivers, $3.10 per hundred miles; overtime 31 cents per hour.

On engines weighing 140,000 pounds on drivers and less than 200,000 pounds on drivers, $3.30 per hundred miles; overtime 33 cents per hour. One hundred miles or less, ten hours or less to constitute a day. Overtime rules in Article 2 apply to firemen in through freight service.

Sec. 2. Firemen in through freight service delayed at any one station thirty minutes or more, picking up or setting out, or weighing cars, will be paid the actual time consumed in doing this work in excess of all other mileage made. Under thirty minutues no allowance will be made.

If the compensation for a through freight trip on the above basis exceeds that for local freight service for the same trip, the latter will apply.

This rule does not in any way conflict with the firemen's schedule governing two classes of service performed in one trip.

ARTICLE 4.
Work Train Service.

Firemen performing work train service will be paid as follows:

$3.00 per hundred miles or less, ten hours or less to constitute a day's work; overtime pro rata computed on the minute basis, less than five minutes not to be counted.

ARTICLE 5.
Switch Engine Service.

Section 1. Firemen performing switch engine service will be paid as follows:

$2.70 per day, ten hours or less to constitute a day. Over ten hours (not including the meal hour) pro rata computed on the minute basis, less than five minutes not to be counted.

Sec. 2. When switch firemen are required to make movements beyond yard limit board, or from one station to another, in either case it is to be understood that the rules governing service performed will apply. The rule does not apply between McCurtain and Panther.

Sec. 3. Switch firemen will be allowed one hour for meals between the hours of 11:30 a. m. and 1:00 p. m., and 11:30 p. m. and 1:00 a. m. This hour not to be included in the ten hours service. If not allowed one full hour within the given time, they will be paid for the hour in addition to any other time allowed.

Sec. 4. No initial or final overtime will be allowed work train and switch firemen. Their time to start at the time they are ordered to report at their engine and to end when relieved from all duty.

ARTICLE 6.
Hostlers.

The minimum pay for hostlers will be $2.50 per day of twelve hours or less, overtime pro rata.

Hostlers will be selected from the oldest firemen making application.

ARTICLE 7.
Computing Overtime and Double Time.

When computing overtime, except where otherwise stated, the first thirty minutes will be counted as one hour, and additional overtime for each succeeding hour will be allowed.

Under no circumstances will the company pay double time for the same service except where otherwise provided.

ARTICLE 8.
Terminal of Runs.

Section 1. A fireman is understood to have reached the terminal of a trip on any division when he reaches the division terminal at which engine crews of trains are usually changed, or of a train to which the trip is made and having done so and proceeds further with the same train, or being sent out on another trip or train, he is in either case understood to have begun another trip.

This applies only to regular assigned runs.

Sec. 2. The terminal of regular assigned runs will begin on the same date the time table takes effect and date run takes effect.

ARTICLE 9.
Doubling.

Ten miles will be allowed for each double over hills. When necessary to help other trains over hills or into station, it will be considered a double; if road overtime is made on same trip, one hour will be deducted for each double.

ARTICLE 10.
Continuous Time.

Section 1. On all turn around runs continuous time will apply. If tied up on account of the service law the time the fireman consumes in taking his required rest will be deducted. This rule does not apply to turn around out of Oklahoma City or Sparks.

Sec. 2. Firemen on regular assigned runs if for any cause except their own, do not reach their terminal or are turned around before reaching terminal, will be allowed regular assigned mileage.

ARTICLE 11.
Towed or Deadheaded to Terminal.

Firemen tied up for rest under the law and then towed or deadheaded into terminal with or without engine, will be paid the same as if they had fired the engine to such terminal.

ARTICLE 12.
Breaking in Engines.

Firemen breaking in engines will be paid through freight rates, ten hours or less, one hundred miles or less will constitute a day's work.

ARTICLE 13.
More than One Class of Service in One Trip.

Section 1. When firemen perform two classes of service in one trip they shall be paid the highest rate of pay for either class of service for the entire trip.

Sec. 2. Firemen in through freight or work train service, required to load or unload stock, or do station switching, such as spotting cars and such work, as performed by local freights, will be paid local freight rates for the trip.

ARTICLE 14.
Station Switching.

Firemen called to do station switching at any place where there is not a regular switch engine, will be paid local freight pay for such service.

ARTICLE 15.
Called and Not Used.

When firemen are ordered out and not used on account of trains annulled or otherwise, they shall receive one-quarter day's pay. If held more than two and one-half hours and less than five hours, they shall be paid one-half day's pay. If held more than five hours they shall be paid for one day for such service which they are called.

ARTICLE 16.
Calling.

Firemen will be called at terminals not more than two hours before leaving time.

ARTICLE 17.
Work Train Tied Up Away and at Home Terminal.

Firemen in work train service held at other than home terminal will be allowed a minimum day at the rate of service last performed for every twenty-four hours so held. The twenty-four hour period will begin at midnight following the tie up period.

When work train firemen are tied up at home terminal twenty-four hours, and it is apparent the work train will be idle for a longer period than twenty-four hours, except Sundays or holidays firemen will be allowed to return to the extra board, or to any run his seniority entitles him to. Home terminal of work train will be considered at Weleetka.

ARTICLE 18.
Tied Up Before Reaching Terminal.

Firemen in regular assigned freight service will not be tied up away from their terminal until the expiration of 15 hours and 30 minutes, and if tied up away from terminal their time to start at expiration of their required rest.

ARTICLE 19.
Firemen in Extra and Unassigned Service Held Away From Home Terminal.

Firemen in pool freight and in unassigned service held at other than home terminal, will be paid continuous time for all time so held after the expiration of twenty-two (22) hours from time relieved from previous duty, at the rate per hour paid him for the last service performed. If held fourteen (14) hours after the expiration of the first thirty-two (32) hour period, he will be paid continuous time for the next succeeding ten (10) hours, or until the end of the twenty-four (24) hour period, and similarly for each twenty-four (24) hour period thereafter. Should a fireman be called for duty after pay begins, his time will be computed continuously.

Home terminal for extra and unassigned firemen will be at Fort Smith.

ARTICLE 20.
Spending Sunday at Home.

Firemen assigned to regular runs with Sunday layover away from home, will be notified if required for service Sunday. If no notice is received, may absent themselves until time for their regular run Monday. If notified and not used, will be paid a minimum day.

When firemen have to change on the road in order to catch their regular runs on account of trains not running on holidays, it shall be arranged, if possible, to make the change so that the men will be at their home for holidays. The oldest firemen to have the preference in changing.

ARTICLE 21.
Coaling Engines.

Section 1. Should an emergency arise where a fireman is required to coal up his engine, he will be allowed and paid two hours for each time required. This in addition to any regular or overtime made on that trip or day.

Sec. 2. Where coal is not taken at the terminal station beginning a trip or run, the coal will be shoveled ahead, by roundhouse force or watchmen.

Sec. 3. On all locomotives, passenger or freight, passing through terminal, coal will be shoveled forward so that it can be reached by firemen from deck of locomotive.

Sec. 4. Firemen when required to leave tank in order to take coal at coal chutes or fill water cars, will be paid one hour overtime at overtime rates in addition to all other time made for each service performed.

ARTICLE 22.
Time Not Allowed.

Section 1. When firemen's time slips are not allowed the Chairman of the Firemen's Committee will be notified within ten days after end of each pay period; if he is not notified, time slips will be allowed as turned in.

Sec. 2. Firemen's tie-ups will be checked from roundhouse register.

Sec. 3. Time checks will be issued for all shortage of time.

ARTICLE 23.
Physical Requirements.

Firemen in the service of this Company when they are examined for color perception, acuteness of vision or hearing, should the indoor test disclose a deficiency of perception, a field test shall be conducted in the following manner:

For vision: With the flags, lamps, and signals used in the daily operation of trains with or without glasses at a distance not to exceed two thousand feet. For the correct observation of semaphore arms, light and lamps or flag signals.

For hearing: Ability to hear ordinary conversation and air whistle signals under service conditions. The result of which shall determine the standing of the person examined.

The firemen's Committee shall be present when such tests are being made.

ARTICLE 24.
Seniority.

Section 1. The seniority rights of a fireman shall be based upon the first service performed as such, if employed as an experienced fireman, or when regularly assigned to firing service, if promoted from other service.

The right to regular runs shall be governed by their seniority rights, thus established.

Sec. 2. When a run or turn becomes vacant permanently, the same shall be bulletined for a period of five days in such a manner that all interested may be advised and same shall be given to the senior fireman making application within that time, excepting that should the senior fireman make application for the vacancy when same occurs, he will be immediately assigned to same and the run vacated by him will be the one to be bulletined.

Sec. 3. It is understood that when a fireman bids in a run it will be considered that he desires that run, unless the bid is cancelled before the bulletin expires.

Sec. 4. Firemen failing to make application for a run when same is bulletined, will have the right to apply for same when it again becomes vacant, or when the run he is then holding shall be pulled off or changed affecting his wages or lay-over to his disadvantage. It being understood that the senior fireman shall have the preference, as to lay-over and runs.

Sec. 5. Temporary vacancies in passenger service will be filled by senior avaliable freight firemen at time vacancy occurs, and the fireman catching the run will hold it until relieved by the regular man or is relieved by the senior freight fireman.

Sec. 6. When regular assigned freight runs have been vacant fifteen days, it will be bulletined for a period of five days and the oldest man applying for same will be assigned to the run, and he will hold same until relieved by the regular assigned man.

Sec. 7. There will be one firemen's extra board, they to fill all vacancies that occur on the system as per rules governing same. No more men to be assigned than necessary. Chicago Joint Agreement rules governing same to apply.

Sec. 8. Firemen who hold engineers' seniority rights and are reduced back to the ranks of firemen, will have preference to emergency runs according to their seniority on the engineer's list. If no demoted engineer available, the oldest fireman having passed required examination will be used.

The above rule will apply to demoted engineers who do not hold fireman seniority.

Sec. 9. Firemen when cut off the board on account of slack business, will be placed back in their turn, provided they keep the Master Mechanic advised of their

whereabouts and return within fifteen days after being notified.

ARTICLE 25.
Miscalling Firemen.

Firemen when run around at terminal through no fault of their own and provided they have had their rest required by law, shall receive pay for the run the same as if they had been called.

ARTICLE 26.
Time Allowed to Eat.

Firemen will be allowed a reasonable time for eating at convenient places, but the Train Dispatcher will be notified of their intention to eat, and operators will deliver all messages to eating houses.

ARTICLE 27.
Rest.

When a fireman feels that he needs rest or is not able to work he will report to the proper officer at terminal and after a continuous service of sixteen hours he must be allowed ten hours rest and send Trainmaster or Dispatcher notice when he will be ready for service again. Federal or State law to govern.

ARTICLE 28.
Deadheading On Company Business.

Firemen deadheading under company orders shall receive one-half pay for the service they are sent to represent.

ARTICLE 29.
Light Running.

Firemen on light runs shall be paid as per class of service causing same.

ARTICLE 30.
Attending Court.

Section 1. Firemen attending court at request of the company will be paid same rate of pay they would have made had they remained on their run, and if away from home station will be allowed legitimate expenses. Extra firemen will be paid through freight rates and expenses as above.

Sec. 2. Fireman attending court shall receive his voucher for same without any unnecessary delay.

ARTICLE 31.
Cleaning Engines and Drawing Supplies.

Firemen will be relieved of all cleaning of engines, and will not be required to draw or place supplies on engines, but will be required to know that supplies have been placed on engines before starting trip. Roundhouse Foreman will see that necessary equipment is placed on engines before leaving roundhouse or terminal.

ARTICLE 32.
Furnishing Ice.

During hot weather the Company will furnish coolers or ice boxes and a supply of ice sufficient for a trip or day for each engine in service.

ARTICLE 33.
Firemen Required to Watch Engines.

When engines tie up where there is no watchman and the fireman is required to watch engine he will be paid ten miles for each hour of watching the engine at regular rates for the overtime for firing the engine.

ARTICLE 34.
Fines.

Firemen will not be suspended, given demerit marks or required to pay fines for the breakage or loss of tools or damage of any kind. Reasonable care on the part of firemen being required by the company to avoid damage to property.

ARTICLE 35.
Transportation.

When change of residence becomes necessary because of new assignment to runs firemen will be furnished free transportation for their household goods. Transportation will also be furnished all dependent members of their families from time to time over the Fort Smith & Western for a reasonable number of times per year.

ARTICLE 36.
Service Letters.

Service letters will be furnished firemen leaving the service of the company upon application to the Master Mechanic. Same to show cause of leaving service.

ARTICLE 37.
Leave of Absence.

Section 1. Leave of absence may be granted for no longer period than ninety days except in case of accident, sickness or agreement between the Master Mechanchanic and Firemen's Adjustment Committee.

Sec. 2. Committeemen will be granted a leave of absence for the adjustment of differences or grievances that may arise between the Firemen and the Officials of the Company. Same to be arranged for as promptly as possible without interfering with the business of the Company.

ARTICLE 38.
Promotion to Engineer.

Section 1. Firemen will be examined and promoted, they having passed required examination according to seniority as firemen and will be assigned as engineers in the same relation to each other as they bore as firemen, excepting in case of failure to pass the examination will rank as junior engineers to those who passed them at the examination. In case of depression of business and a surplus of engineers, firemen shall have the right to resume their former position as firemen provided they are taken off the engineer's board in the reverse order of their seniority and will retain their rights as engineers when their services are again required as such.

Sec. 2. When necessary to increase the number of engineers, two firemen will be promoted to each engineer employed.

ARTICLE 39.
Discipline and Investigation.

Firemen shall not be discharged, suspended or given demerit marks except for good and sufficient cause of which he must immediately be notified, and should he upon receipt of same feel that his discipline is unjust, he shall have the right to an investigation if he makes application in writing for same within five days after receipt of such notice, before a Board of Inquiry consisting of the Superintendent, Trainmaster, Master Mechanic or Traveling Engineer, one from each department only being necessary to constitute such Board. He shall have the right to have any fireman on Committee of his own selection, employees of the Company, to assist him at the investigation and these only with the Officials will be permitted to examine or question witnesses. If not

satisfied with the verdict of the Board, he will have the right within ten days to appeal his case in writing to the General Officers who will grant a hearing ordinarily within ten days. The intention being that ten days will be given each ranking officer to whom appeal is made. On such appeal the employees shall be represented as before, or may have the assistance of an officer of the organization of which he may be a member. If the punishment is found to be unjust, the employee will be paid for all time lost, or have any demerit marks removed from his record if such had been entered against him.

ARTICLE 40.

Adjustment Committee.

The regular authorized committee of firemen will represent the firemen in all matters that may arise between the company and the men, the officials assisting them as far as possible with company's record.

Change of Agreement.

No change in the foregoing rates, rules and regulations will be made without thirty days notice being given to either party.

FORT SMITH & WESTERN RAILROAD,
A. L. MILLS, *Receiver.*
THE BROTHERHOOD OF LOCOMOTIVE
FIREMEN AND ENGINEMEN,
GEO. KONGABLE, *Chairman.*

(Entry of appearance of defendants and original motion filed by J. V. Bourland, District Attorney, to dismiss bill not printed.)

AMENDED MOTION TO DISMISS PETITION.

(Filed in U. S. District Court July 30, 1917.)

J. Virgil Bourland, United States Attorney for the Western District of Arkansas, sued as such, defendant, now comes and moves the court to dismiss the petition at the cost of the plaintiffs.

As ground for this motion it is shown—

1. The plaintiffs may not sue jointly the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company concerning a subject-matter which is not

"in respect of any act or transaction" of the receiver "in carrying on the business connected with such property," without the previous leave of the court first had and obtained.

2. The plaintiffs have not such an interest in the subject-matter,—as their alleged interest, if any they have, is too remote,—as authorizes them to maintain the suit and the petition filed by them against the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company jointly is an attempt to intermeddle and interfere with the proper maintenance, operation, and administration of the property by the receiver in accordance with the laws of the land and to obstruct a public official in requiring a proper observance thereof.

3. The plaintiffs have mistaken their cause of action and remedy, if any they have, as they have no authority or standing to maintain the petition in this Court against the United States Attorney for the Western District of Arkansas and the Receiver of The Fort Smith & Western Railroad Company jointly as—

(a) The court appointed the receiver as its own officer and in maintaining, operating, and administering the property, the court does not direct, or communicate with, its own officer through the medium of injunction orders;

(b) the receiver is presumably acting under the authority of the court which appointed him.

4. As applicable to the receiver of The Fort Smith & Western Railroad Company, the act of Congress approved February 3 and 5, 1916, entitled "An Act to establish an eight hour day for employees of carriers engaged in interstate and foreign commerce, and for other purposes," is constitutional.

5. The petition is without equity on its face for insufficiency of fact to constitute a valid cause of action.

Wherefore, defendant prays that his motion be sustained.

J. V. BOURLAND,
United States Attorney, Western District of Arkansas,
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

DECREE.

(Entered in U. S. District Court Aug. 1, 1917.)

This cause came on to be heard at this term on the amended motion of the defendant, J. Virgil Bourland, United States Attorney, etc., to dismiss the petition for injunction and the same was argued by counsel, Blackburn Esterline, Special Assistant to the Attorney General and J. Virgil Bourland *in propria personae*, for the motion, and James B. McDonough, in opposition thereto; and thereupon, upon consideration thereof, it is ordered, adjudged and decreed as follows, viz:

First: That the amended motion to dismiss the petition be and the same is hereby sustained.

Second: That the petition for injunction be and the same is hereby dismissed for want of equity at the cost of the plaintiffs.

To which order and each and every part thereof the plaintiffs by their counsel, then and there in open court objected and excepted.

FRANK A. YOUMANS,
United States District Judge,
Western District of Arkansas.

PETITION FOR APPEAL.

(Filed in U. S. District Court August 6, 1917.)

Come now the Superior Savings & Trust Company, Trustee, as Trustee, and the Fort Smith & Western Railroad Company, and represent to this Honorable Court that in the case of The Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, Plaintiffs, vs. Arthur L. Mills, as Receiver, and J. Virgil Bourland, United States District Attorney for the Western District of Arkansas, Defendants, being case No. 283, Eq., which is a cause pending in the United States District Court for the Western District of Arkansas, Fort Smith Division, the defendants in error or appellees, being the defendants below, secured a judgment and decree of this Court dismissing the complaint herein for want of equity.

Your petitioners respectfully represent that they filed their complaint in equity herein on the 14th day of July, 1917, and the defendant, Arthur L. Mills, as Receiver of the Fort Smith & Western Railroad Company filed his answer admitting the allegations of the com-

plaint in equity to be true. The defendant, J. Virgil Bourland, filed herein an amended motion to dismiss this cause for want of equity. This amended motion to dismiss was filed herein before August 2, 1917. The said motion to dismiss came on for hearing in the United States District Court for the Western District of Arkansas, Fort Smith Division, on August 2, 1917. The said United States District Court, upon a hearing on said motion to dismiss, sustained the same. Thereupon said United States District Court for the Western District of Arkansas, Fort Smith Division, sitting in equity in said cause No. 283 in Equity, sustained said motion to dismiss, and dismissed the complaint of the appellants herein, and rendered a decree against the said appellants for the costs. The appellants, sometimes called herein, the Plaintiffs in Error, to-wit: The Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, Trustee, duly excepted to the action of the court, in sustaining said motion to dismiss and in dismissing their complaint herein, and prayed an appeal to the Supreme Court of the United States. The said United States District Court for the Western District of Arkansas, Fort Smith Division, in said decree above referred to, held that the complaint herein did not state a cause of action in equity, and that said Fort Smith & Western Railroad and the Superior Savings & Trust Company were not entitled to the relief prayed for and thereby held that the Act of Congress, passed and approved September 2, 1916, being an Act entitled "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce" and commonly known as the Adamson Act, was not in conflict with the Fifth Amendment of the Constitution of the United States. The final order of the court, decreeing and adjudging that said complaint should be dismissed was made on August 2, 1917. The appellants herein, the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company resisted said decree and judgment of the court on the ground that the said Act of Congress was void, because in conflict with Amendment No. 5 of the Constitution of the United States, in that said Acts of Congress deprived the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, of their liberty of contract, and property, without due process of law, and took their private property for public use without just compensation.

The petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, respectfully show that late in the afternoon of August 2, 1917, and after the court had dismissed the bill of complaint referred to, the said J. Virgil Bourland, United States District Attorney, caused six warrants of arrest to be issued against Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, charging and alleging that said receiver had violated the said Act of Congress passed and approved September 2, 1916, and otherwise described above.

Your petitioners further allege that the said Arthur L. Mills, Receiver, is making preparations to pay out the sums of money described in the bill of complaint and said payments will be made if a temporary restraining order is not granted herein, and the parties to whom said payments will be made are insolvent, and even if the judgment herein is reversed the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company will thereby lose said money, amounting in the aggregate to approximately $7,000.00, as a judgment against the payees would be worthless and nothing could be collected on any such judgment.

Wherefore your petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, feeling aggrieved by said decree and judgment of the court, appeal from said judgment on the ground that said Act of Congress is void as against your petitioners for the reasons above set forth. The said appeal is based upon the reasons specified and set forth in the Assignment of Errors filed herewith, and the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company pray that an appeal be allowed and granted to them, and that said appeal and pleadings and all of the orders, mandates, decrees and judgments, transcript and other proceedings had in this cause relating to said decree dismissing said complaint may be transmitted to the Supreme Court of the United States, as provided by the Acts of Congress, and further pray that Honorable Court may hear said cause anew, and further pray that said judgment and decree of the court aforesaid be reversed and that a decree in favor of the Fort Smith & Western Railroad and the Superior Savings & Trust Company be made, adjudging and decreeing that said petitioners are entitled to the relief

prayed for in the appeal and for such other and further proceedings herein as your petitioners may be entitled to in equity and good conscience.

A. C. DUSTIN,
JAMES B. McDONOUGH,
Attorneys for Petitioners and Appellants.

AFFIDAVIT.

STATE OF ARKANSAS,
COUNTY OF SEBASTIAN, ss.

I, James B. McDonough, being first duly sworn, on my oath state that I am one of the attorneys of the Fort Smith & Western Railroad Company and of the Superior Savings & Trust Company, Petitioners and Appellants in the above entitled cause, and I further state that I am familiar with the controversy in said cause, and I further state that the amount in controversy exceeds the sum of Five Thousand Dollars ($5,000.00) exclusive of interest and costs.

JAMES B. McDONOUGH.

Subscribed and sworn to before me this 6th day of August, 1917.

WM. S. WELLSHEAR, *Clerk.*

ASSIGNMENT OF ERRORS.

(Filed in U. S. District Court August 6, 1917.)

Come the appellants and petitioners, the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, and file herein the following assignment of errors, appearing upon the record in this cause, which said appellants and petitioners aver occurred upon the trial of said cause, and for which the judgment should be reversed.

1.

The court erred in holding that the Act of Congress passed and approved September 2, 1916, and entitled, "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson Law, was valid as against the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company.

2.

The court erred in holding and decreeing that the said Act of Congress passed and approved September 2, 1916, entitled "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson Law was not in conflict with Amendment No. Five of the Constitution of the United States, and therefore void.

3.

The court erred in holding and decreeing that the said Act of Congress passed and approved September 2, 1916, entitled "An Act to Establish an Eight Hour Day for Employees of Carriers Engaged in Interstate and Foreign Commerce," and commonly known as the Adamson Law was not in conflict with Section One of Article Fourteen of the Constitution of the United States, and therefore void.

4.

The court erred in dismissing the bill of complaint of the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company for want of equity and in rendering a decree against said plaintiffs for costs.

Wherefore the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, petitioners and appellants and plaintiffs on this appeal pray that the judgment and decree of the United States District Court for the Western District of Arkansas, Fort Smith Division, rendered on the second day of August, 1917, against the said Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, dismissing their bill of complaint be reversed and that said cause be remanded to the court below for further proceedings as may be proper to be taken therein, under the laws of the United States and the directions of this Court.

THE FORT SMITH & WESTERN RAILROAD COMPANY
AND
THE SUPERIOR SAVINGS & TRUST COMPANY,
By A. C. DUSTIN,
JAMES B. McDONOUGH,
Their Attorneys.

ORDER ALLOWING APPEAL.

(Entered in U. S. District Court August 6, 1917.)

On this 6th day of August, 1917, came the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, by their counsel, James B. McDonough, and presented herein their petition for appeal and also presented an assignment of errors, accompanying the same, which petition upon consideration of the court is hereby allowed. And the court hereby allows an appeal to the Supreme Court of the United States upon the filing of a bond in the sum of Ten Thousand Dollars ($10,000.00) with good and sufficient surety to be approved by this Court.

The said appeal is hereby granted to the said Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, as Trustee, from the decree and judgment of the court, dismissing for want of equity the bill of complaint herein.

It further appearing that the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company have filed their assignment of errors and petition for appeal and a bond duly executed and the court being satisfied that the sureties on said bond are good and sufficient, said bond is by the court approved.

It is further ordered that the clerk of this Court make out immediately and send to the Clerk of the Supreme Court of the United States, under the seal of this Court, all the records and proceedings, and all things concerning the judgment and decree above referred to, together with this order, allowing this appeal and that said records be transmitted to said clerk of the Supreme Court of the United States at the City of Washington, District of Columbia, to the end that if any error be in the judgment and decree of this Court that said Supreme Court of the United States may cause further to be done in said matter to correct said error, if error there be, in dismissing said bill of complaint.

It further appearing to the court that said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company prayed a temporary injunction, enjoining the receiver, Arthur L. Mills, from paying out of the funds of the Receivership the moneys involved and referred to in the Bill of Complaint herein, the court declines and refuses to grant an injunction suspending the action of the receiver in the premises.

FRANK A. YOUMANS, *Judge.*

BOND ON APPEAL.

(Filed in U. S. District Court Aug. 6, 1917.)

KNOW ALL MEN BY THESE PRESENTS: That we, the Fort Smith & Western Railroad Company, and the Superior Savings & Trust Company, Trustee, and the American Surety Company of New York, as surety, are held and firmly bound unto Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States District Attorney, in the full and just sum of Ten Thousand Dollars ($10,000), to be paid to the said parties, their attorneys, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 6th day of August, 1917.

The above obligation is upon the conditions named below:

Whereas, lately at a District Court of the United States for the Western District of Arkansas, Fort Smith Division, in a suit pending in said court, wherein the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company are plaintiffs and Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, United States District Attorney, were defendants, said cause being numbered 283 Equity, a decree was rendered by said court on August 2, 1917, dismissing the bill of complaint and adjudging the costs against the petitioners and appellants herein, and

Whereas, the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have taken an appeal from the decree and order of the court in the premises above referred to and have filed a copy thereof in the Clerk's office of the Supreme Court of the United States to reverse said decree, dismissing the said bill of complaint, and a citation directed to Arthur L. Mills, Receiver of the Fort Smith & Western Railroad Company, and J. Virgil Bourland, District Attorney, citing and admonishing said parties to be and appear at a session of the United States Supreme Court to be holden in the city of Washington, District of Columbia, within the time required by law, and

Whereas, the same questions were raised by the Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, by filing the same petition in the case of Superior Savings & Trust

Company, Trustee, vs. The Fort Smith & Western Railroad Company, No. 254, Equity, in this Court, and

Whereas, the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have appealed from the order of the court in said cause No. 254, which order dismissed the petition praying for the same relief, and

Whereas, the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company, Trustee, have appealed from the order of the court dismissing the petition in said cause No. 254, and

Whereas a citation has been issued in that cause, citing and admonishing the said Arthur L. Mills, Receiver, of the Fort Smith & Western Railroad Company, to appear at a session of the United States Supreme Court to be holden in the city of Washington, District of Columbia, within the time required by law.

Now the condition of the above obligation is such that if the said Fort Smith & Western Railroad Company and the Superior Savings & Trust Company shall duly prosecute their appeals to effect and answer all damages and costs in each case above named, if they fail to make good their pleas and appeals in each and both of said causes, then the above obligation to be void; else to remain in full force and virtue.

THE FORT SMITH & WESTERN RAILROAD COMPANY,
By JAMES B. MCDONOUGH, *Its Attorney,*

THE SUPERIOR SAVINGS & TRUST COMPANY,
By JAMES B. MCDONOUGH, *Its Attorney.*

THE AMERICAN SURETY COMPANY OF NEW YORK,
By CECIL WARNER, *Res. Vice Pres.*
Attest: HARRY K. ALBERS, *Its Asst. Sec.*

Approved by

FRANK A. YOUMANS,
United States District Judge.

MEMORANDUM OPINION.

(Entered in U. S. District Court Aug. 1, 1917.)

The motion to dismiss is sustained and the injunction denied upon the authority of the decision of the Supreme Court of the United States in the case of *Wilson vs. New* construing the so-called Adamson Law.

FRANK A. YOUMANS, *Judge.*

(Certificate of Clerk to record not printed.)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 191—.

No. 626

THE FORT SMITH & WESTERN RAILROAD COMPANY, AND THE SUPERIOR SAVINGS & TRUST COMPANY, as Trustee,

Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States Attorney for the Western District of Arkansas,

Appellees.

STIPULATION FOR PRINTING RECORD ON APPLICATION FOR RESTRAINING ORDER.

IT IS AGREED by counsel for all parties that the following papers may be printed as a record by stipulation for use on application for restraining order in this Court:

1. Application in United States Supreme Court for restraining order.
2. Affidavit of A. C. Dustin.
3. Appellants' bill, including Exhibits A, B, C, D, E, and F attached to said bill.
4. Amended motion of the defendant J. Virgil Bourland, United States District Attorney.
5. Decree of the court.
6. Petition for appeal.
7. Assignment of errors.
8. Order allowing appeal.
9. Bond.
10. Memorandum opinion.

IT IS AGREED that the foregoing is sufficient to show the merits of the question presented by the motion for restraining order.

IT IS FURTHER AGREED that said motion is to be called up for submission to the court on August ...., 1917, without further notice to counsel.

A. C. DUSTIN,
Counsel for Appellants.

JNO. W. DAVIS, SOL'R GEN'L,
Counsel for Appellee Bourland.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

FORT SMITH & WESTERN RAILROAD COMPANY and The Superior Savings & Trust Company, Trustee, Appellants,
v.
ARTHUR L. MILLS, RECEIVER, ETC., AND J. Virgil Bourland, U. S. District Attorney.
} No. 244.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES IN RESPONSE TO ORDER OF THE COURT MADE MAY 20, 1918.

The court has ordered arguments to be submitted on the subject of how far, if at all, the acts of Congress touching the taking over by the Government of the railroads and the action taken thereunder "leave no issue in this case for judicial consideration."

The suit was one to enjoin the United States attorney from enforcing against the receiver of the plaintiff sections 1, 2, and 3 of the law known as the Adamson Law. (Ch. 436, 39 Stat. 721.)

These sections establish, for the purpose of reckoning the wages of the employees of interstate railroads,

an eight-hour day, beginning January 1, 1917, and provide for a commission to observe, for a period of not more than nine months, and report on the operation and effect of the law. Pending the report, and for thirty days thereafter, it is made a misdemeanor to reduce the compensation of such employees below the previous standard day's wage. It is the last-named provision the enforcement of which the bill seeks to enjoin.

It will be seen that the offenses involved could have been committed only during a period ending thirty days after the report of the commission to be filed, at the latest, within a reasonable time after the expiration of nine months from January 1, 1917. In the absence of anything in the record to the contrary, it will be presumed that this report was filed during the year 1917. (And this is, in fact, true.)

The law is still in force, but, by its terms, no offense could be committed under the section in question after the year 1917. The railroads were not taken over until December 28, 1917, and then for only a limited period. The railroad companies did not cease to exist. They were only deprived temporarily of the use of their property. And for this they are to receive just compensation. In the meantime, they remain subject to all preexisting civil or criminal liabilities. The bill seeks to enjoin the enforcement of a criminal liability which existed prior to December 28, 1917. The subsequent acts of Congress merely fix the terms upon which the Government may temporarily hold and operate the roads.

We are, therefore, constrained to the view that the question involved is, in no way, affected by the legislation referred to or any action taken, even assuming that the railroad in question has been taken over. Besides, it is true, as stated in brief of counsel, that on June 10, 1918, the Government relinquished all control over the plaintiff's railroad in the manner provided in the act of March 21, 1918.

Respectfully submitted,

WILLIAM L. FRIERSON,
Assistant Attorney General.

OCTOBER, 1918.

○

DEC 3 1917
JAMES D. MAHER,
CLERK.

In the Supreme Court of the United States

No. [redacted]42

OCTOBER TERM, 1917

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

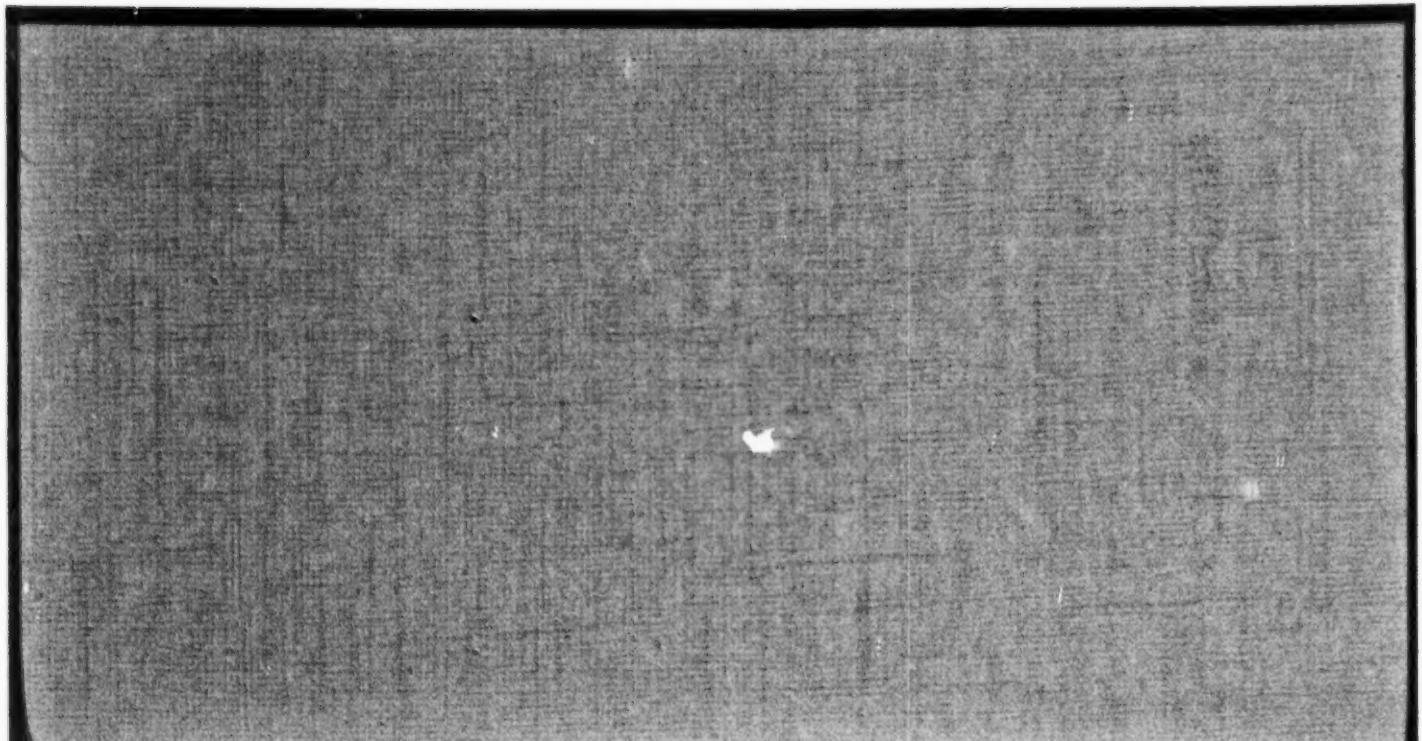
FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, Trustee,
Appellants,

vs.

ARTHUR L. MILLS, etc., Receiver, and J. VIRGIL BOURLAND, United States District Attorney,
Appellees.

BRIEF OF THE PLAINTIFFS IN REPLY TO BRIEF FILED BY THE UNITED STATES.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.



In the Supreme Court of the United States

No. 626

October Term, 1917

Appeal from the District Court of the United States for the Western District of Arkansas.

FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, Trustee,
Appellants,

vs.

ARTHUR L. MILLS, etc., Receiver, and J. VIRGIL BOURLAND, United States District Attorney,
Appellees.

BRIEF OF THE PLAINTIFFS IN REPLY TO BRIEF FILED BY THE UNITED STATES.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

In the Supreme Court of the United States

No. 626

October Term, 1917

Appeal from the District Court of the United States for the Western District of Arkansas.

FORT SMITH & WESTERN RAILROAD COMPANY and THE SUPERIOR SAVINGS & TRUST COMPANY, Trustee,
Appellants,

vs.

ARTHUR L. MILLS, etc., Receiver, and J. VIRGIL BOURLAND, United States District Attorney,
Appellees.

BRIEF OF THE PLAINTIFFS IN REPLY TO BRIEF FILED BY THE UNITED STATES.

I.

Our original brief filed herein was entitled, "Brief on Motion for Preliminary Injunction." Beginning with the last paragraph on page 15 and extending over on to page 16 of that brief we discussed the question of the right to a preliminary injunction in advance of the final hearing. The case having now been set down for hearing on the merits that part of our brief should be disregarded.

In the court below defendant Bourland urged four objections in opposition to the relief sought by the bill, three of which were of a technical nature. These three are discussed in our other brief, pages 8 to 10, and have evidently been abandoned by defendant's counsel, as they are not urged or referred to in the brief filed on behalf of the United States

The defendant, however, now raises a new objection to the bill. (See brief of the United States, p. 19, paragraph VI.) Defendant claims the bill is insufficient in failing to show how much of the earnings of the railroad company are derived from interstate business, citing the rate cases decided by this Court, wherein it was held that the reasonableness of a particular rate in question was to be determined by the earnings from the class (interstate or intrastate, as the case might be) to which it belonged.

There are two answers to this new objection:

(a) The Adamson Law applies to all employes who are engaged in any capacity in the operation of trains in interstate commerce. Their compensation under the law in no respect depends upon the time devoted to interstate business or to earnings from such business. It follows, therefore, that the ability of the receiver of the railroad company to pay such compensation and the confiscatory character of the charges so placed upon the Receiver by the Adamson Law are to be determined not by the earnings from interstate business but by the earnings generally from all business.

(b) This objection should have been presented to the lower court by motion to separate the intrastate and interstate earnings, which was not done. (See their amended motion, Rec., pp. 59-60.) The motion to dismiss in the lower court was sustained solely on the ground that this

Court had disposed of the question in *Wilson vs. New* (Rec., p. 69.)

While a motion to dismiss has the effect of a demurrer, if granted, it is not in all respects in matters of procedure to be treated like a demurrer to the bill. If this objection were well taken, it would not call for an *affirmance* of the judgment of the lower court, but rather an *order* remanding the case in order that the bill *might be amended in the respects in which it is claimed to be objectionable.*

II.

Laws to protect the health and safety of employes or the public enacted under the police powers of the state or in furtherance of some general public policy by Congress, such as the Carmack Amendment (219 U. S., 186), the Sixteen Hour Law (221 U. S., 612) are in a class by themselves. The power to enact such laws is an attribute resting in the sovereign power of all governments.

Munn vs. Illinois, 94 U. S., 113, 125;
Inland Steel Co. vs. Yedinak, 172 Ind., 423;
See subject Police Powers, *Words and Phrases*, Vol. 3, Second Series, p. 1064, etc.

The question of the effect upon the profitableness of a business undertaking in order to comply with proper health or safety regulations cannot arise. If such laws affect contracts or impair the income of individuals, such results are incidental—not the object of the law.

In the same way but for different reasons, the owner of private property devoted to a public use under a charter or franchise is not excused from the obligations imposed by such charter or franchise to provide such rea-

sonable facilities as come within its public duties because of the expense, so long as the owner retains its charter.

Railway Co. vs. North Dakota, 236 U. S., 585, 595;
Railway Co. vs. Minnesota, 238 U. S., 340;
Railway Co. vs. Kansas, 216 U. S., 263, 278;
Atlantic Coastline Railway vs. Commission, 206 U. S., 1.

The United States in this case admits that this railroad is in all respects performing its public duties. The added expense of $1,000.00 per month placed on this bankrupt railroad against both the ~~bill~~ will of employer and employes will give no additional facilities to the public. The direct purpose of this law *if applied to this railroad* is to take its money without any consideration whatsoever, or without any additional benefit to the public, and give such money to the employes in violation of contract which both parties wish to observe and carry out.

III.

The right to regulate interstate and foreign commerce vested in Congress by the Constitution must be exercised in all cases where private property is taken for a public purpose, or for the use of the public in subordination to the provisions of the Fifth Amendment.

Monongahela Nav. Co. vs. United States, 148 U. S., 312, 336;
United States vs. Lynah, 188 U. S., 445, 465, 471;
United States vs. Cress, 243 U. S., 316, 326.

IV.

But it is said this is a general law which being sustained as constitutional in *Wilson vs. New*, governs this railroad because it is not within the express exceptions enumerated in the act itself; and certain cases, notably;

Railway Co. vs. Mottley, 219 U. S., 467, 478-479;
Caminetti vs. United States, 242 U. S., 470; and
United States vs. Mosley, 238 U. S., 383, 387-388
(see their brief, pp. 9-14),

are cited and quoted from as sustaining that position.

This contention overlooks entirely those exceptions recognized by a long line of decisions where cases, confessedly within the letter of a statute, are held to be outside the law because not within its spirit nor within the intention of its makers.

Holy Trinity Church vs. United States, 143 U. S., 457, 459;
Law Ow Bew vs. United States, 144 U. S., 47, 59;
Henderson vs. Mayor of New York, 92 U. S., 259;
United States vs. Kirby, 7 Wallace, 482;
Oates vs. National Bank, 100 U. S., 239.

In the first case above, Brewer, J., said:

> "It is a familiar rule in the construction of statutes that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers."

In the cases cited by the defendants, *supra*, the matter passed upon was within both the letter and spirit of the law as interpreted by the court.

This Court will not decide abstract questions nor determine moot cases. *Wilson vs. New* was selected by certain attorneys, out of a large number of similar pending cases, and advanced and heard expeditiously, and while it was selected as a test case it was nevertheless a

concrete case presenting for decision a question of law *based upon a conceded state of facts.* It follows that the general language used in the opinion in that case must be restricted to the conceded facts of that case.

While laws are sometimes so framed that they must be sustained as a whole or else held to be entirely void (*Oklahoma vs. Wells Fargo & Co.*, 223 U. S., 298), yet it is a very common thing to hold a law constitutional as applied to one state of facts and unconstitutional as applied to a different state of facts.

Kansas City Railway vs. Anderson, 233 U. S., 325, 329-330;

Minnesota Rate Cases, 230 U. S., 352 (referred to and commented on in our former brief, p. 12).

The Adamson Law having been sustained as valid in *Wilson vs. New,* it is within the power of this Court to say whether it applies to and shall be enforced in a case where the facts are diametrically contrary to the facts of that case.

We believe, therefore, that the general language employed by the court in *Wilson vs. New,* should be limited to the facts of that particular case.

V.

The assumption of counsel for the United States that Congress has the power to fix wages for employes of interstate carriers is unwarranted by any decision of this Court. It was certainly not so held in *Wilson vs. New.* The Chief Justice carefully refrained from enlarging the issue to include that question.

Wilson vs. New decides that Congress has the power to adopt appropriate measures to keep open the channels of interstate commerce and that the Adamson Law

fixing a standard day and a method of computing wages was a constitutional exercise of that power *as to that particular railroad*, in view of the facts found that but for this law interstate commerce on that railroad would be destroyed. The power existing, its exercise under the circumstances before the court in that case was held to be proper and not arbitrary.

That I am right as to what the majority of the court decided in *Wilson vs. New*, appears clearly from the opinion of the Chief Justice (pp. 347-8):

> "It is also equally true that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relations is primarily private, the establishment and giving effect to such agreed on standard is not subject to be controlled or prevented by public authority. But taking all these propositions as undoubted, if the situation which we have described and with which the act of Congress dealt be taken into view, that is, the dispute between the employers and employees as to a standard of wages, their failure to agree, the resulting absence of such standard, the entire interruption of interstate commerce which was threatened, and the infinite injury to the public interest which was imminent, it would seem inevitably to result that the power to regulate necessarily obtained and was subject to be applied to the extent necessary to provide a remedy for the situation, which included the power to deal with the dispute, to provide by appropriate action for a standard of wages to fill the want of one caused by the failure to exert the private right on the subject and to give effect by appropriate legislation to the regulations thus adopted."

Again on p. 353, the Chief Justice said:

> "The capacity to exercise the private right free from legislative interference affords no ground for saying that legislative power does not exist to pro-

tect the public interest from the injury resulting from a failure to exercise the private right."

This was followed by the further significant limitation:

> "As to both carrier and employe the beneficent and ever present safeguards of the Constitution are applicable and therefore both are protected against confiscation and against every act of arbitrary power. * * *"

In other words, the Adamson Law was not an arbitrary exercise of power by Congress when applied to *Wilson vs. New*, because of the peculiar conditions there found to exist, which conditions, it is conceded, do not exist in the case at bar, but are all to the contrary. Why then should the law be held to be applicable to the defendant? As to the defendant it is an arbitrary exercise of power. None of the conditions found necessary to sustain the law as valid in the majority opinion in *Wilson vs. New* exist in our case.

Respectfully submitted,

JAMES B. MCDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

No. 6[redacted]42

SEP 24 1917

JAMES D. MAHE

CL

In the Supreme Court of the United States

FORT SMITH & WESTERN RAILROAD COMPANY, and THE SUPERIOR SAVINGS AND TRUST COMPANY, as Trustee,

Plaintiffs and Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney.

Defendants and Appellees.

BRIEF ON MOTION FOR PRELIMINARY INJUNCTION.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

In the Supreme Court of the United States

FORT SMITH & WESTERN RAILROAD COMPANY, and
THE SUPERIOR SAVINGS AND TRUST COMPANY,
as Trustee,
Plaintiffs and Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND,
United States District Attorney.
Defendants and Appellees.

BRIEF ON MOTION FOR PRELIMINARY INJUNCTION.

JAMES B. McDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

In the Supreme Court of the United States

FORT SMITH & WESTERN RAILROAD COMPANY, and THE SUPERIOR SAVINGS AND TRUST COMPANY, as Trustee,

Plaintiffs and Appellants,

vs.

ARTHUR L. MILLS, as Receiver, and J. VIRGIL BOURLAND, United States District Attorney.

Defendants and Appellees.

BRIEF ON MOTION FOR PRELIMINARY INJUNCTION.

This case was commenced on July 14, 1917, in the United States District Court, for the Western District of Arkansas, by the Fort Smith & Western Railroad Company, the owner of the property, and by the Trust Company as Trustee for the bondholders, as plaintiffs, against the Receiver of the Railroad Company and the United States District Attorney for that District. The Receiver was appointed in that same court on October 9, 1915, in an action of foreclosure of the mortgage of the railroad Company under which the Trust Company was Trustee. The purpose of this suit was to enjoin the payment of wages prescribed by the Adamson Law to the employees of the Receiver engaged in the operation of trains in interstate commerce, on the ground that as *applied to this railroad,* the law was in conflict with the fifth amendment of the Constitution of the United States. The

employees mentioned were after Jan. 1, 1917, paid wages under a contract made in July, 1916, (prior to the passage of the law) for the term of one year from Aug. 1, 1916, and to continue after Aug. 1, 1917, until terminated on 30 days notice.

The bill alleges that there is due and unpaid upon the bonds secured by the mortgage, over $9,000,000, and that Receiver's Certificates have been issued to the extent of over $325,000, that there has been actually invested in the property approximately $9,000,000 and that the property in the possession of the Receiver is of a value in excess of $7,000,000, upon which a fair and reasonable return is at least 6%, or ~~$420,000~~ $420,000. The bill further shows that no dividends have ever been paid upon the capital stock of the Railroad Company, and that no interest has been paid upon the bonds since October 1, 1907.

The gross and net earnings and the deficits from the operation of this property are set forth as Exhibit A, attached to the bill, from the fiscal year ending June 30, 1907, down to and including May 31, 1917, from which it appears, not going back more than five years, that in 1913 this property earned net a little over $67,000; in 1914 there was a deficit of over $29,000; in 1915 net earnings of a little over $17,000; for the fiscal year ending June 30,1916, a deficit of over $45,000, and for the eleven months ending May 31, 1917, there were net earnings of a little over $94,000. It thus appears that the net earnings in the present current year are a trifle over one per cent. on the value of the property, there being an actual deficit in two out of the last 5 years.

The bill further alleges that there was a public necessity for this railroad, that it was built and has been conducted honestly, with skill and economy; that no ex-

cessive and unreasonable salaries are paid, and it sets forth the reasons why, through this new and undeveloped country, the earnings have not been larger. The bill alleges, that as applied to this railroad, the Adamson Law is confiscatory and wanting in due process of law, and violates the fifth amendment of the Constitution of the United States.

The bill further alleges (see paragraphs numbered 6 and 7 of the bill) in substance; that in July, 1916, the engineers, conductors, firemen and trainmen engaged in the operation of trains in interstate commerce on this railroad, through their proper agents and representatives, entered into contracts with the Receiver Mills, under which they agreed to work for the receiver for the period of one year, beginning August 1, 1916, and performed during said time certain services for certain compensation set forth therein, and the bill specifically avers that the schedules showing compensation and services, it was agreed "should remain in effect for the full term of one year, subject to modification thereafter on thirty days' notice". And the bill then proceeds to aver that neither the employes, nor the organizations to which they belong, prior to, at the time of, nor since the passage of said act of Congress, had made any demands upon the Receiver contrary to said contracts, and that they had not left, nor do they propose to leave the employ of the receiver, nor to strike, or violate their contracts, but on the contrary, that they had remained, and were proposing to continue to remain in the service of said Receiver and perform in every respect their contracts; that there is no dispute between the Receiver and the employes in respect to wages or hours of service, and no disagreement whatever regarding the same, and that

the employes have been ever since the making of said contracts, and now are, engaged in the proper and peaceful performance of all their duties, and operating trains on this railroad in interstate commerce, and giving the public proper and adequate service, and the public has not been in any manner whatsoever discommoded or interfered with, nor has the traffic on said railroad been interfered with, and that there is the utmost harmony in the relations between the Receiver and his employes, and that the employes are anxious to abide by and perform their contracts.

Bourland was made defendant herein as the person charged with the duty of enforcing the acts of Congress. The bill alleges that he was threatening the Receiver with prosecution if he did not observe the law and pay to the employes the excess compensation after January 1, 1917, prescribed by the law, over the compensation as fixed by their contracts, and that the Receiver, intimidated by the threats of the District Attorney, is proposing to pay such wages which amount to upwards of $1,000 per month. In fact since the bill was dismissed in the lower court the District Attorney has caused to be issued six warrants of arrest for the Receiver.

The Receiver entered his appearance as a defendant to the suit but made no answer. The District Attorney appeared and made two motions, an original motion and later a second or amended motion to dismiss the bill. The matter was heard by the court on the amended motion, which was granted and the bill dismissed, on the authority of *Wilson, U. S. Atty. vs. New*, 243 U. S. 332, (Rec. p. 70). An appeal was prayed for and granted by the District Court and the record has been filed in the Supreme Court and the appeal perfected.

Complainants have filed herein a motion for a temporary injunction, pending the hearing and decision of this appeal.

This motion was presented on September 1st, to Justice Day of this Court, who entered an order herein enjoining the defendant Bourland and his successors in office from taking any steps whatever to interfere with the operations of the railroad, and from attempting to enforce said act of Congress, and enjoining the Receiver from complying with said act of Congress, and from making payment to the employes. The order contains, however, the following:

> "The preliminary injunction herein granted shall continue and remain in force and effect until the said motion can be regularly presented to the Supreme Court at the opening of said court at the October term, A. D. 1917, and until the said motion is decided by the court, the appellants being required to present said motion to said court, on the first motion day of the October term of this court, or as soon thereafter as the court will consent to hear the same."

In order to present this matter to Justice Day, we caused a record to be printed and stipulated with counsel. This record is printed in buff color to distinguish it from the pink or terra cotta color of the record which has since been printed by the clerk of this court. The page references in our brief refer to the *records as printed by us.*

The amended motion of the District Attorney is found in the printed record, page 61. A motion of this character is under Equity Rule No. 29 of this court equivalent to a demurrer. It admits all the facts pleaded. The dismissal of the bill was, of course, a final order from which an appeal will lie.

The judgment of dismissal was based solely upon the fourth ground set up in the amended motion, (Rec., p. 70) to-wit: that the Act of Congress known as the "Adamson Law," as construed by the Supreme Court of the United States, was controlling in this case.

Before discussing this main question, we will notice various other objections set up in the amended motion, as they may be again urged here.

The first three objections (Record, pp. 61, 62) must be considered on the theory that the law is invalid.

The first objection is based upon a misconception of the principles of Equity and a wrong interpretation of the Act of Congress authorizing suits against receivers. Prior to the Act of Congress (Jud. Code, Sec. 66), a court appointing a receiver and taking possession of property was held to have exclusive jurisdiction of all matters relating thereto. No action of any kind could be prosecuted *in any other court* against the receiver except with the permission of the court appointing him.

Barton vs, Barbour, 104 U. S., 126, 136;
Peoples Bank vs. Calhoun, 102 U. S., 256, 262;
Express Co. vs. Railway Co., 99 U. S., 191, 198.

The Act of Congress modified this rule to this extent: that it permitted suits to be brought against federal receivers without the previous leave of the court "in respect of any act or transaction of (the receiver) in carrying on the business in connection with such property," —this provision being followed by the very pertinent paragraph:

> "but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice."

There are several answers to the first objection:

(a) The suit being brought by the plaintiff corporation representing stockholders and by the Trustee for the bondholders of a bankrupt railroad to enjoin the Receiver from paying out money as wages to employees unlawfully, is clearly a suit "in respect of acts or transactions in carrying on the business in connection with the property" under the receivership, and this case is, therefore, within the express terms of the Act of Congress. No consent was therefore necessary even had the suit been instituted in some *other* court.

(b) The object of the rule established by equity requiring consent from the court was to prevent conflict of jurisdiction. (See above cases.) This suit was instituted *in the court appointing the Receiver* and not in some other court, and the case is not within the rule even if not covered by the Act of Congress above.

(c) The Act of this court in taking jurisdiction of the case, hearing and deciding it on the merits, and granting an appeal from the judgment was in and of itself a *consent* to bringing the suit and dispensed with any previous formal consent if such consent was necessary.

(d) The Receiver himself might, if he had elected to do so, have brought this suit. (*Wilson vs. News, supra.*) The Receiver is made a defendant; all the parties are before the court; equity will realign the parties, plaintiff and defendant, if necessary to do justice; equity disregards the position the party holds on the record.

United States vs. Union Pacific R. R. Co., 98 U. S., 569, 607.

Littlefield vs. Perry, 21 Wall., 205, 223.

The second objection is equally unfounded. It is hard to conceive what would create an interest if these

plaintiffs have none. *Reegan vs. Farmers Loan & Trust Co.*, 154 U. S., 362, and *Smythe vs. Ames*, 169 U. S., 466, are decisive.

The third objection, even if good could not be made by the District Attorney. It would at best be open only to the Receiver or the court appointing the Receiver. Neither the court nor the Receiver offered any objection.

It is further the duty of a court of equity to grant all proper relief to parties in court, and even though an injunction should not be the proper means of communication from the court to its receiver, nevertheless the plaintiffs are entitled to any proper relief which it may be within the power of the court to grant.

We come then to consider the fourth ground of the motion, to-wit: That the Adamson Law as construed by the Supreme Court applies to and controls the situation disclosed in the petition filed herein.

It becomes important at the threshold to ascertain just what was decided in that case. The Chief Justice, being of the opinion that the law was to be interpreted both as fixing a standard day for computing wages and also in a sense as a fixing of wages for a limited time in order to enable the parties to voluntarily agree upon the rate of wages, stated the question to be decided thus:

> "Was there power in Congress, *under the circumstances existing*, to deal with the hours of work and wages of railroad employes engaged in interstate commerce?"

The "circumstances existing" referred to by the Chief Justice was a:

> "Dispute between employers and employees as to a standard of wages, their failure to agree, the resulting absence of such standard, the entire interruption of interstate commerce which was threatened, and the infinite injury to public interest which was imminent."

His conclusions were stated thus:

> "Being of the opinion that Congress had the power to adopt the act in question, whether it be viewed as a direct fixing of wages to *meet the absence of a standard* on that subject resulting from the *dispute between the parties* or as the exertion by Congress of the power which it undoubtedly possessed to provide by appropriate legislation for compulsory arbitration—a power which inevitably resulted from its authority to protect interstate commerce in *dealing with a situation like that which was before it*—we conclude that the court below erred. * * *" (Italics mine.)

This power to regulate commerce was, however, recognized by the Chief Justice to be limited by the fifth amendment to prevent confiscation. Thus he said:

> "It is always to be borne in mind that as to both carrier and employe the beneficent and ever present safeguards of the constitution are applicable and therefore both are protected against confiscation."

and further:

> "No contention is made that in any view the enforcement of the act (in this case) would result in confiscation."

The fifth amendment to the Constitution of the United States limits the power of Congress, in the same way as the fourteenth amendment limits the power of the states, and forbids the taking of life, liberty or property without due process of law, and prohibits the taking of private property for public use without just compensation. Among the many cases in the books, we cite only the following:

Construing the fifth amendment:

United States vs. Cress, 243 U. S., 316;
Adair vs. United States, 208 U. S., 161;
Monongahela Navigation Co. vs. United States, 148 U. S., 312, 336;
United States vs. Lynah, 188 U. S., 445-447.

Construing the fourteenth amendment:

Regan vs. Trust Co., 154 U. S., 362;
Smythe vs. Ames, 169 U. S., 466;
Minnesota Rate Cases, 230 U. S., 352.

QUESTION IN THIS CASE.

Assuming that Congress has the power to enact the Adamson law and that the emergency found to exist in the case heretofore before the court made the exercise of such power constitutional and not arbitrary, may such law nevertheless be enforced against other railroads where the emergency in fact did not and does not exist, and where the enforcement of the law operates to confiscate the property of the carrier.

There is a broad well defined practical difference between the power to pass a law and the enforcement of such a law in court when applied to individual cases. This distinction most frequently appears in cases of rate regulation of public service corporations and is well illustrated in the *Minnesota Rate Cases* (230 U. S. 352). In that case the power to prescribe the rates therein ordered which were of general application throughout the state was sustained. In respect to the Northern Pacific Railroad and the Great Northern Railroad the rates were held valid and the law enforced, but as against the Minneapolis & St. Louis Railroad the rates were held invalid and their enforcement refused. In this case Justice Hughes said:

> "In determining whether that right (the right to receive just compensation for the service given the public) has been denied, each case must rest upon its special facts."

A careful reading of all the opinions in the Adamson case shows that all the members of the court were in accord on the proposition that if a case were presented where the operation of the law when applied to a specific railroad was confiscatory as to that road within the meaning of the fifth amendment, it could not be enforced against such party. The Adamson law is regulatory in character, not differing in principle from rate regulations and is constitutional only where the limitations prescribed against confiscations are not transcended.

The Adamson Law, while general in its terms, is not like the sixteen hour law before this Court in *B. & O. R. R. vs. Interstate Commerce Commission,* 221 U. S. 612. The sixteen hour law, like the Interstate Commerce Act before this court in the Mottley case (219 U. S. 467), was enacted in furtherance of a general public policy which was necessarily of universal application. Thus Justice Hughes said in the *B. & O. case*:

> "Congress may enact laws for the safeguarding of the persons and property that are transported in that interstate commerce and of those who are employed in transporting them. (Citing cases.) The fundamental question here is whether a restriction upon the hours of labor of employes who are connected with the movement of trains in interstate transportation is comprehended within this sphere of authorized legislation. * * * The length of hours of service has direct relation to the efficiency of the human agencies upon which protection to life and property necessarily depends. * * * In its power suitably to provide for the safety of employes and travelers, Congress was not limited to the enactment of laws relating to mechanical appliances, but it was also competent to consider, and to endeavor to reduce, the dangers incident to the strain of excessive

hours of duty on the part of engineers, conductors, train dispatchers, etc."

See also *Adair vs. United States,* 208 U. S. 161.

Laws of this character before this Court in the above cases are like laws enacted by the states under the reserve police powers of the states, such as laws limiting the hours of labor of females and the hours of labor of men in unhealthy occupations. The Adamson law was justified and its constitutionality sustained by the majority of this Court only because enacted to meet an emergency. It was not enacted in furtherance of any public policy.

Being of the opinion, therefore, that this law although general in its terms must yet yield to the facts of each individual case, we pass to a consideration of the facts before us.

In our case the Receiver and the employes had a time contract good for one year, to be terminated at the end of such year only upon thirty days' notice, entered into before the law was passed fixing wages, services, etc. Both parties are anxious to carry the contract out in all its terms. There was no threat to strike and no threat to interfere with interstate commerce, but on the contrary the bill expressly avers and the motion to dismiss admits that interstate commerce was and is being properly cared for, and in no respect threatened or interfered with. How under such a situation can this Act of Congress be enforced in the light of the facts shown in the bill that the *additional wages required to be paid are confiscatory.* That the additional burden put upon this railroad makes the law confiscatory cannot be well denied under the facts conceded to be true:

In *Minnesota Rate Cases*, 230 U. S. 352, 434, Justice Hughes quoted from *Smythe vs. Ames*, as follows:

> "What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience."

In *Wilcox vs. Gas Co.*, 212 U. S., 19, 48-50, the Supreme Court holding that rates in force for the supplying of gas to the city of New York which would yield six per cent. on the value of the property devoted to the public use were not confiscatory, called special attention to the *safety of the investment and the uniformity of the income.*

In the *Minnesota Rate Cases, supra* (230 U. S. 469-473) it was held that rates which would give about 7% to two of the railroads were not confiscatory but when applied to the third railroad yielding about 3½% to 4-14/100% they were *clearly confiscatory.*

The earnings of the railroad set forth in the bill in this case are only a little over 1% on the value of the property, devoted to the public service.

It may be argued that $1,000 a month or thereabouts is not a *large* sum of money. That is not the test of the constitutionality of a law:

> *Northern Pacific Ry. Co. vs. North Dakota*, 236 U. S. 585.
> *Great Northern Ry. vs. Minnesota*, 238 U. S. 340.
> *Chicago Milwaukee Ry. vs, Wisconsin*, 238 U. S. 491.

We respectfully submit, therefore, that the Adamson Law so-called, is not to be enforced against the Receiver of the Fort Smith & Western Railroad Company, and that it is invalid as to him.

It remains only to discuss the question of the right to a preliminary injunction in advance of the final hearing.

It is admitted on the record that unless ~~his~~ this injunction is granted, the Receiver will under the threats and intimidations from his co-defendant, the District Attorney, out of the income of this property covered by the lien of the mortgage to The Superior Savings & Trust Company, pay to his employes money, which, if the law is invalid, they are not entitled to. The affidavit in support of this application (Rec. p. 3) shows that this money will be paid to about 92 different individuals, some 23 of whom are no longer in the service of the Receiver. Many more of those men may leave the employ of the Receiver before this case can be ultimately heard and disposed of on the merits. Many of them the affidavit shows are without means to answer to a judgment. Aside from the question of the right to recover back by suit any payment voluntarily made to these employes by the receiver, there would be a multiplicity of individual suits necessary. The case is therefore one of irreparable injury entitling complainants to a preliminary restraining order.

Reynes vs. Dumont, 130 U. S., 354, 394.
United States vs. Union Pacific Ry., 160 U. S., 1, 51.
Oelrichs vs. Spain, 15 Wall., 211, 228.
Singer vs. Adams, 165 Fed. Rep., 877, 880.
Cummings vs. Nat'l Bank, 101 U. S., 153, 156.

THE VIOLATION OF EXISTING CONTRACTS.

Not only is the Adamson law invalid as against the Receiver because its enforcement would be confiscatory, but the law should in its terms by this Court be interpreted to be limited in its application and construed to apply only to those cases where the emergency justifying the law in the opinion of the majority of the Court in

fact existed. It has been repeatedly held that the constitutional power to regulate interstate commerce was not intended to give Congress the power to nullify private contracts lawfully made unless the natural, direct and immediate effect of such contracts was to impede and obstruct interstate commerce. *Railroad vs Richmond,* 19 Wallace 584, 589; *Addyston Pipe & Steel Co. vs. United States,* 175 U. S., 211, 233-4. The remarks of Justice Harlan in *L. & R. R. R. vs. Mottley,* 219 U. S., 467, explain but do not nullify the foregoing cases.

While, therefore, the Constitution of the United States contains no direct prohibition against Congress enacting laws, the effect of which is to impair private contracts, such as is found in respect to the states in the fourteenth amendment, nevertheless, private contracts may not be stricken down at the arbitrary will of Congress and this court should limit the Adamson Law, even if it be sustained in a proper case, to such cases as justified its enactment. It should be held to be limited to cases where the emergency in fact existed.

It was argued strenuously below and may be here that no injunction can issue in this case because the effect of such injunction is to restrain the commission of crime. This question has been so repeatedly decided adversely to this contention that no discussion of the point ~~was~~ is necessary.

Ex Parte Young, 209 U. S., 123, 155.
Western Union vs. Andrews, 216 U. S., 165, 166.
Adams vs. Tanner, 37 Sup. Ct. Rep., 662.

Respectfully submitted,

JAMES B. MCDONOUGH,
A. C. DUSTIN,
Attorneys for Appellants.

Office Supreme Court, U. S.
FILED
JUN 24 1918
JAMES D. MAHER,
CLERK.

In the Supreme Court of the United States

OCTOBER TERM, 1917.

No. [redacted]42

FORT SMITH & WESTERN RAILROAD COMPANY et al.,
Appellants,

vs.

ARTHUR L. MILLS, Receiver, et al.,
Appellees.

MEMORANDUM ON BEHALF OF APPELLANTS.

A. C. DUSTIN,
Solicitor for Appellants.

In the Supreme Court of the United States

OCTOBER TERM, 1917.

No. 626.

FORT SMITH & WESTERN RAILROAD COMPANY et al.,

Appellants,

vs.

ARTHUR L. MILLS, Receiver, et al.,

Appellees.

MEMORANDUM ON BEHALF OF APPELLANTS.

A. C. DUSTIN,

Solicitor for Appellants.

In the Supreme Court of the United States

OCTOBER TERM, 1917.

No. 626.

FORT SMITH & WESTERN RAILROAD COMPANY et al.,

Appellants,

vs.

ARTHUR L. MILLS, Receiver, et al.,

Appellees.

MEMORANDUM ON BEHALF OF APPELLANTS.

On May 20, 1918, this Court entered herein the following order:

> "The attention of counsel is directed (a) to the clause of the Army appropriation bill of August 29, 1916 (39 Stat. 645), authorizing the President in time of war to take possession and assume control of railroads; (b) to the proclamation of the President of December 26, 1917, exerting the power conferred; (c) to the act of March 21, 1918 (Public No. 107, Sixty-fifth Congress), providing 'for the operation of transportation systems while under Federal control, for the just compensation of their owners, and for other purposes'; (d) to the proclamation of the President of March 29, 1918, authorizing the Director General of Railroads to agree with carriers as to the amount of compensation to be paid. And they are required to submit on or before the first day of the next term arguments upon the subject of how far, if at all, the legislation referred to and the action taken under it leave no issue in this case for judicial consideration; in other words, have caused the case to become wholly moot."

The legislation mentioned and the action of the President thereunder do not affect this case for the following reasons:

First—

(a) The President did not purport by his Proclamation to take possession of all railroads and he did not in fact take possession of the Fort Smith & Western Railroad, nor did he ever exercise or attempt to exercise any control over the Fort Smith & Western Railroad under his said Proclamation;

(b) While the Act of Congress of March 21, 1918, placed all railroads, including the Fort Smith & Western Railroad, under Federal control, said Act in terms authorized the President to relinquish such control, and the President acting through duly appointed agencies did on June 10, 1918, relinquish all control of the Fort Smith & Western Railroad and surrendered it into the possession and control of said Receiver. Between March 21, 1918, and June 10, 1918, the President exercised no control in fact over said Railroad, or said Receiver thereof.

Second—

The legislation mentioned and the action of the President taken thereunder relate wholly to the future and not to the past. So far as the past is concerned Mills, Receiver, retains all earnings previously made and remains liable for all debts previously created during his operations as Receiver, including all unpaid wages. The Adamson Law has not been repealed. The penal provisions thereof remain in force unaffected by said Acts of Congress and may still be enforced against the Receiver in

this case by his co-defendant the District Attorney to the same extent as heretofore. Said Receiver may still be forced to pay out of the earnings in his hands (which belong to the appellants) the unlawful wages fixed by the Adamson Law, intimidated to that course by his co-defendant, unless the injunction hereinbefore granted be made perpetual.

We, therefore, believe that the legislation referred to and the action taken thereunder by the President, in no respect whatever affects the right of the appellants.

If, however, we are wrong in this position the action of the President in releasing the Fort Smith & Western Railroad from Federal control leaves this case unaffected by said Acts of Congress and by anything done thereunder.

Very respectfully submitted,

A. C. DUSTIN,
Solicitor for Appellants.

INDEX.

	Page.
STATEMENT OF THE CASE	1–3
BRIEF OF ARGUMENT	4–7
ARGUMENT	7–28
1. Questions settled by *Wilson* v. *New*	7–8
2. Questions now involved	8–9
3. Act intended to apply to all interstate railroads	9–14
4. Application of the act to railroads not threatened with strikes not an arbitrary or unconstitutional exercise of power	15–17
5. The existence of a wage contract was no obstacle to the power of Congress to fix wages	17–19
6. No ground for holding act void as being confiscatory, or as taking property without due process of law	19–28

CASES CITED.

Atlantic Coast Line v. *Georgia*, 234 U. S. 280	7, 25
Atlantic Coast Line v. *North Carolina Corp. Comm.*, 206 U. S. 1, 26	6, 24
Atlantic Coast Line v. *Riverside Mills*, 219 U. S. 186, 202	5, 18
Baltimore & Ohio R. R. Co. v. *I. C. C.*, 221 U. S. 612, 619	5, 6, 18, 25
Caminetti v. *United States*, 242 U. S. 470, 490	5, 13
Charlotte, C. & A. R. R. Co. v. *Gibbes*, 142 U. S. 386	7, 25
Chicago, Burlington & Quincy R. R. Co. v. *McGuire*, 219 U. S. 549, 567	5, 18
Chicago, Rock Island & Pac. R. R. Co. v. *Arkansas*, 219 U. S. 453	7, 25
Cooley v. *Board*, 12 How. 298	7, 25
Johnson v. *Southern Pacific Co.*, 196 U. S. 1	6, 25
Knox v. *Lee*, 12 Wall. 457, 550, 551	5, 18
Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, 478–479, 482	4, 5, 10, 18, 19
McLean v. *Arkansas*, 211 U. S. 539	7, 25
Minnesota Rate Cases, 230 U. S. 352, 435	5, 22
Missouri Pacific Ry. Co. v. *Kansas*, 216 U. S. 262, 278, 279	6, 24
Noble State Bank v. *Haskell*, 219 U. S. 104, 110, 111	26, 27
Second Employers' Liability Cases, 223 U. S. 1	7, 25
Smyth v. *Ames*, 169 U. S. 466, 541	5, 21
United States v. *Mosley*, 238 U. S. 383, 387–388	5, 14
Wilson v. *New*, 243 U. S. 332, 347, 348, 350, 359, 360, 364, 388	2, 4, 5, 6, 7, 8, 11, 12, 15, 16, 19, 23

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

FORT SMITH & WESTERN RAILROAD COMPANY and Superior Savings & Trust Company, trustee, appellants,
v.
ARTHUR L. MILLS, RECEIVER, ETC., AND J. Virgil Bourland, United States district attorney.
No. 626.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The bill in this case sought to enjoin the application of the act of September 3, 1916, known as the Adamson Law (c. 436, 39 Stat. 721), to the Fort Smith & Western Railroad Company.

The act in question (sec. 1), after enacting that beginning January 1, 1917, eight hours shall be deemed a day's work for the purpose of reckoning the compensation for services of all employees to which it applies, provides (sec. 2) for the appointment of a commission to observe and report on the operation and effect of the law for a period of not less than six

nor more than nine months, and that (secs. 3 and 4), pending the report and for thirty days thereafter, it shall be a misdemeanor to reduce the compensation of such employees for an eight-hour day below the then standard day's wage. It has been held to be a valid and constitutional law. (*Wilson* v. *New*, 243 U. S. 332.)

Conceding that Congress had the power to enact the Adamson Law and that the emergency then existing, a threatened strike which would obstruct interstate commerce, made the exercise of such power "constitutional and not arbitrary," the theory of the bill is that the third section can not be enforced against a particular carrier which in fact had in force a wage contract satisfactory to its employees and was not threatened with a strike, and when the result of enforcing that section would be to confiscate the property of such carrier.

The allegations upon which is based the claim that the third section is unenforceable as against this carrier are:

(1) At the time of the passage of the act there was in effect a contract with the employees fixing a schedule of wages, on the basis of a 10-hour day, for a period of one year from August 1, 1916. The employees are satisfied with the contract and have made no complaint, or demands, or threat to strike. The service has not suffered and the public is in no danger of being incommoded. And hence the emergency mentioned in *Wilson* v. *New* does not exist in this case. (R., pp. 5, 6, and 10 et seq.)

(2) The physical property of this railroad exceeds in value $7,000,000. The owners should justly earn not less than 6 per cent, or $420,000. But, on account of the undeveloped state of the country traversed, competitive conditions, the low passenger rates fixed by the law of Arkansas, and other existing circumstances, it has never, though properly managed, yielded and can not be expected for some years to come to yield that much income. During the 10 years preceding 1917 the gross earnings ranged, in round numbers, from $671,000 in 1915 to $879,000 in 1911, the average being $751,000. The average net earnings for the same period were $62,000 per year, ranging from $17,000 in 1915 to $229,000 in 1907, with actual losses ranging from $29,000 to $45,000 in 1909, 1914, and 1916. The enforcement of section 3 of the act would add about $1,000 per month to operating expenses. The result will be to deprive the parties of liberty of contract, impair the obligation of contracts, and confiscate property contrary to the fifth amendment to the Constitution. (R., pp. 4, 6, 7, and 8.)

The railroad is in the hands of a receiver, and the bill was filed by the company itself and the trustee in its mortgage securing its bonds against the receiver and the United States attorney. The receiver made no defense, but the motion of the United States attorney to dismiss was sustained.

I.

It is conclusively settled that:

1. Congress has the *power* to regulate the wages of employees of interstate carriers when necessary to protect and keep open the channels of interstate commerce.

2. The conditions existing justified the *exertion* of this power, and the Adamson Law is a valid and constitutional law of general application.

Wilson v. *New*, 243 U. S. 332, 359, 360, 364, 388.

II.

The questions now presented are:

1. Was the act intended to apply to all interstate railroads or only to those then threatened with a strike?

2. If intended to apply to a railroad not so threatened, was it an arbitrary and unconstitutional exertion of power as to such railroad?

3. As applied to this railroad, is it void because confiscatory?

III.

Undoubtedly the act was intended to apply to all interstate railroads save only those expressly excepted, viz, those less than a hundred miles long and electric street and interurban lines.

Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, 478, 479.

Wilson v. *New*, 243 U. S. 347, 348.
Caminetti v. *United States*, 242 U. S. 470.
United States v. *Mosley*, 238 U. S. 383, 387, 388.

IV.

Congress having the power to fix wages, whether it should fix them for all interstate railroads or only for those then actually in dispute with their men was a question of policy with respect to which its action is not subject to the control of the courts.

V.

The existence of a wage contract between a railroad and its men is not an obstacle to the exertion by Congress of its power to fix wages.

Knox v. *Lee*, 12 Wall. 457, 550, 551.
Atlantic Coast Line v. *Riverside Mills*, 219 U. S. 186, 202.
Chicago, Burlington & Quincy R. R. Co. v. *McGuire*, 219 U. S. 549, 567.
Baltimore & Ohio R. R. Co. v. *I. C. C.*, 221 U. S. 612, 619.
Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, 482.

VI.

The act can not be held void as being confiscatory.

1. The bill only alleges that the entire business is unremunerative. There is no allegation that the *interstate business*, even with the added expense, will not yield a fair return.

Smyth v. *Ames*, 169 U. S. 466, 541.
Minnesota Rate Cases, 230 U. S. 352, 435.

2. The bill alleges that, even before the passage of the Adamson Law, the business of this railroad was unprofitable, and alleges that the reasons therefor were: (1) The undeveloped condition of the country; (2) competition with other railroads, and (3) the low passenger rates fixed by the Arkansas law for local traffic. To say that these are reasons for declaring a law confiscatory, because it adds an insignificant amount to the operating expenses, would be to deny to Congress the power to apply any regulatory statute, requiring the expenditure of money, to a railroad whose business happens to be unprofitable.

3. But, on the question of confiscation or taking property without due process of law, there is a wide distinction between laws fixing rates and those laws which are designed to secure the furnishing of proper facilities to the public. As to the latter, the question of expense is no obstacle to the exertion by Congress of its power. And the Adamson Law having been held to be a valid and constitutional law of general application, its enforcement against a particular railroad can not be made to depend upon the revenues or the financial condition of that railroad.

Wilson v. *New*, 243 U. S. 332, 350.

Atlantic Coast Line v. *North Carolina Corp. Com.*, 206 U. S. 1, 26.

Missouri Pacific Ry. Co. v. *Kansas*, 216 U. S. 262, 278.

Baltimore & Ohio R. R. Co. v. *I. C. C.*, 221 U. S. 612.

Johnson v. *Southern Pacific Co.*, 196 U. S. 1.

Chicago, Rock Island & Pac. R. R. Co. v. *Arkansas*, 219 U. S. 453.
Atlantic Coast Line v. *Georgia*, 234 U. S. 280.
Charlotte, C. & A. R. R. Co. v. *Gibbes*, 142 U. S. 386.
McLean v. *Arkansas*, 211 U. S. 539.
Second Employers' Liability Cases, 223 U. S. 1.
Cooley v. *Board*, 12 How. 298.

ARGUMENT.

No attack is made on the first section of the act, which merely establishes eight hours as the measure or standard of a day's work. The complaint is directed alone at section 3, which requires that temporarily, and during a period of investigation, a less wage shall not be paid for eight hours' work than was then being paid for a longer standard day.

I.

Questions settled by Wilson V. New.

The scope of the present inquiry is much narrowed by the recent decision in *Wilson* v. *New*, 243 U. S. 332.

That case removes from the realm of further argument the propositions that (1) Congress has the power to regulate the wages of employees of interstate carriers when necessary to protect and keep open the channels of commerce, and (2) the conditions then existing justified the exertion of this power and the Adamson Law is a valid and constitutional enactment.

The majority opinion (p. 359) announced these conclusions whether the act be viewed as a direct fixing of wages or a provision for compulsory arbitration. Mr. Justice McKenna, concurring, said:

> My purpose is to deal with the meaning of the act. With the consideration of the power to pass it I am satisfied with the opinion. (p. 360.)

Mr. Justice Day, dissenting from the general conclusion, agreed to the first proposition, saying:

> I am not prepared to deny to Congress, in view of its constitutional authority to regulate commerce among the States, the right to fix by lawful enactment the wages to be paid to those engaged in such commerce in the operation of trains carrying passengers and freight. (pp. 364, 365.)

Mr. Justice McReynolds, dissenting, said that the majority opinion established the power of Congress to fix wages (p. 388). And Mr. Justice Pitney, with whom Mr. Justice Van Devanter agreed, dissented expressly upon the ground that the act must be construed as one fixing wages, a subject which, in his opinion, was beyond the power of Congress under the interstate commerce clause.

II.

Questions now involved.

The appellants, as they must, accept as settled the propositions just stated. Accordingly they concede that the act is a valid enactment and confine their

insistence to the contention that it is not enforceable against this particulr railroad. This contention leaves only these questions to be determined:

(1) Was the act intended to apply to all interstate railroads or only to those then threatened with a strike?

(2) If applied to a railroad not so threatened, was it an arbitrary and unconstitutional exercise of power?

(3) As applied to this railroad, is it void because confiscatory?

III.

Act intended to apply to all interstate railroads.

No language can be found in the act itself indicating a purpose to so limit it as to exclude from its provisions any railroad, except as noted below, engaged in interstate transportation. The language used is broad and unqualified and without the slightest ambiguity. It is that the standard established shall be used in reckoning the compensation "of all employees who are now or may hereafter be employed by any common carrier * * * and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads." The only exceptions made are in the cases of railroads not exceeding a hundred miles in length and electric interurban lines.

It will be seen that Congress has not only employed the broadest and most inclusive language possible, but has itself undertaken to enumerate the excep-

tions to be recognized. This enumeration, under the familiar rule of construction, excludes all other exceptions. And it has not named, as one of these exceptions, a railroad which has a wage contract in force or is not threatened with a strike. This court, speaking of a similar question, said:

> * * * Manifestly, from the face of the commerce act itself, Congress, before taking final action, considered the question as to what exceptions, if any, should be made in respect of the prohibition of free tickets, free passes and free transportation. It solved the question when, without making any exceptions *of existing contracts*, it forbade by broad, explicit words *any* carrier to charge, demand, collect, or receive a "greater or less *or different* compensation" for *any* services in connection with the transportation of passengers or property than was specified in its published schedules of rates. The court can not add an exception based on equitable grounds when Congress forbore to make such an exception. (*Louisville & Nashville R. R. Co.* v. *Mottley*, 219 U. S. 467, 478–479.)

The only basis for the argument that a railroad not threatened with a strike was not intended to be embraced in the terms of the act is the idea that it was enacted to meet a particular emergency—the disaster about to result from the inability of the railroads to agree with their men. From this, it is argued that there was no intention to do more than was necessary to avert the threatened disaster, and

that the act, as passed, was not intended to apply to a company which had no disagreement with its men.

In *Wilson* v. *New*, *supra*, this court stated, as the reason impelling the exertion of legislative power, the history of the controversy leading to the passage of the act. In doing so, it explained the nature of the emergency that existed. But the argument for appellants proceeds upon the assumption that if the strike had not been averted it would have involved only those railroads which had an actual disagreement with their men. This court, however, evidently understood the situation differently. The opinion states that about 15 per cent of the railroads were already on the eight-hour basis. But this is followed by the statement that "the organizations representing the employees of the railroads" made certain demands and, upon their being refused, called "a general strike of all railroad employees throughout the whole country." Clearly, then, Congress understood that the disaster to be averted was a strike participated in by the employees of all railroads and no reason existed for drawing any distinction between those which were in an actual dispute with their men and those, if any, which were not.

The circumstances which impelled Congress to act were not those surrounding any particular railroad or railroads, but those bringing about the general condition into which the interstate commerce of the country was about to be thrown. These circum-

stances were enumerated by the Chief Justice in the language quoted at page 10 of the brief for appellants as—

> dispute between the employers and employees as to a standard of wages, their failure to agree, the resulting absence of such standard, the entire interruption of interstate commerce which was threatened, and the infinite injury to the public interest which was imminent. (pp. 347, 348.)

These being true, Congress did not undertake to investigate the conditions surrounding different railroads. It merely faced the fact that the commerce of the country was about to be tied up and endeavored to adopt a general measure to give relief. If it had known, as it probably did not, that there were some roads whose men would not join in the strike, it doubtless would still have passed an act applying to all alike. But slight knowledge of human nature is necessary to make it apparent that if relief had been granted to some and withheld from others, the result would have been new dissatisfaction, which would speedily have brought about another emergency of the same kind to be dealt with.

But whether all or only some of the railroads would have been involved in the threatened strike, it was for Congress to say to what extent the public interest required the exertion of its now established constitutional power. Its determination of this question is expressed by the act it passed. If it had thought that its purpose would have been served by a law applying only to actual disagreements between

railroads and employees, it could easily have so limited the act. Instead, it used language plain and susceptible of but one meaning and applying the act to all railroads engaged in interstate commerce, with the exceptions noted. This being true, the courts are not at liberty to look elsewhere for the legislative intent.

In *Caminetti* v. *United States*, 242 U. S. 470, Mr. Justice Day, disposing of the contention that the white-slave law was shown by committee reports and debates in Congress to have been intended to reach only "commercialized vice," said, at page 490:

> Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching the true meaning of the legislature in cases of doubtful interpretation, *Blake* v. *National Banks*, 23 Wall. 307, 319; *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 42; *Chesapeake and Potomac Telephone Co.* v. *Manning*, 186 U. S. 238, 246; *Binns* v. *United States*, 194 U. S. 486, 495. But, as we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports accompanying their introduction, or from any extraneous source. In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent.

Congress doubtless had in mind the existing dispute between certain railroads and their men. But this does not prevent the law from applying to all who come within its terms. In disposing of such a contention with respect to section 19 of the Penal Code, directed primarily at the Ku Klux Klan, this court, in *United States* v. *Mosley*, 238 U. S. 383, 387–388, said:

> The source of this section in the doings of the Ku Klux and the like is obvious and acts of violence obviously were in the mind of Congress. Naturally Congress put forth all its powers. * * * Just as the Fourteenth Amendment, to use the happy analogy suggested by the Solicitor General, was adopted with a view to the protection of the colored race but has been found to be equally important in its application to the rights of all, section 6 had a general scope and used general words that have become the most important now that the Ku Klux have passed away.

The language of the Adamson Law includes this railroad, and it will not, therefore, be excluded by construction merely because all the circumstances which *occasioned* the passage of that law did not exist with reference to it.

IV.

Application of the act to railroads not threatened with strikes not an arbitrary or unconstitutional exercise of power.

Conceding the right of Congress to use the wage-fixing power to avert threatened disaster to interstate commerce, and that, in the use of that power, it has passed a general law *intended* to apply to all interstate railroads, the question is, what reason can be assigned for denying the enforcement of that law against the railroad now before the court?

The object was to enact a law which would help to keep open and unobstructed the channels of commerce. Congress, by the first section of the act, adopted, as a permanent policy, the establishment of an eight-hour standard day. Its power to do this is not questioned; but, standing alone, the establishment of the eight-hour day would not avert the disaster then imminent. Unless the law insured such an adjustment to the new standard as not to reduce the wages then paid, the strike would proceed. The change in standards presented a problem in wage fixing. Primarily, as remarked by the Chief Justice in *Wilson* v. *New* (p. 347), this is a matter for private agreement, and ordinarily, it may be said, should be so left. But, at the time, private agreement had utterly failed. Congress had the power to intervene to prevent the destruction of commerce. It recognized its duty; but it was not ready to adopt wage fixing as the permanent

policy of the Government. Action, however, to meet the emergency was imperative. Evidently desiring to interfere as little as possible with the private right of contract, it determined to limit the exertion of its power to a few months so as to provide for a period of adjustment, leaving the matter of wages after that period to be fixed by agreement, if possible, or by further legislative action, if necessary.

The argument for appellants proceeds, in a measure, upon the mistaken assumption that *Wilson* v. *New* holds that the emergency conferred a power that would not otherwise have existed. But this was distinctly repudiated by the Chief Justice when he said that "although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed" (p. 348). In other words, the emergency which calls for the exertion of a power neither adds to nor takes from the extent of that power. Congress either has the *power* to fix wages for a railroad whether it is threatened with a strike or not, or it has no wage-fixing power at all. When, therefore, it recognized, in an existing emergency, a call, which it felt impelled to obey, to exert its power to fix wages, the question whether that power should be exerted against only those railroads then in trouble with their men was one of policy with respect to which its action was not subject to the control of the courts.

It must be clear then that the mere fact that the railroad now in question was not threatened with a strike furnishes no valid reason for not enforcing the law against it.

V.

The existence of a wage contract was no obstacle to the power of Congress to fix wages.

It is said that the act invades the rights of this railroad by depriving it of the benefits of a contract made with its men and fixing a schedule of wages to be in effect for a year from August 1, 1916.

It is conceded that the Constitution contains no express prohibition against Congress enacting laws the effect of which will be to impair private contracts, but it is said that "private contracts may not be stricken down at the arbitrary will of Congress." But the argument leaves out of consideration the fact that there must be implied in every private contract affecting interstate commerce the condition that it shall be subject to change or abrogation by any rightful exercise of the legislative power to regulate such commerce. It being settled that Congress has the power to fix wages, any wage contract made by an interstate carrier is, by its implied terms, to be effective only so long as it does not contravene any rule established by Congress on the same subject. Accordingly, when Congress fixes a schedule of wages different from that fixed by the contract, the latter is not *impaired*, but force is given to its implied conditions and it terminates in accordance with its own terms.

In *Knox* v. *Lee*, 12 Wall. 457, 551, it was said that—

> * * * As in a state of civil society property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority.

And in *Atlantic Coast Line* v. *Riverside Mills*, 219 U. S. 186, 202:

> It is obvious, from the many decisions of this court, that there is no such thing as absolute freedom of contract. Contracts which contravene public policy can not be lawfully made at all, and the power to make contracts may in all cases be regulated as to form, evidence, and validity as to third persons. The power of government extends to the denial of liberty of contract to the extent of forbidding or regulating every contract which is reasonably calculated to injuriously affect the public interests.

To the same effect are *Chicago, Burlington & Quincy R. R. Co.* v. *McGuire*, 219 U. S. 549, 567, and *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612, 619.

Louisville & Nashville R. R. Co. v. *Mottley*, 219 U. S. 467, is illuminating and conclusive. The Mottleys, prior to the passage of the act forbidding free transportation, had made a contract with the railroad whereby, as part consideration for the settlement of

a personal-injury claim, the latter had agreed to furnish certain passes. The railroad complied with the contract until the passage of the act which made it unlawful to furnish transportation upon such a consideration. The Mottleys brought suit to enforce the contract and insisted that, being lawful when made, it was not destroyed by the subsequent act of Congress. But the court (p. 482) said:

> * * * The agreement between the railroad company and the Mottleys must necessarily be regarded as having been made subject to the possibility that, at some future time, Congress might so exert its whole constitutional power in regulating interstate commerce as to render that agreement unenforceable or to impair its value. That the exercise of such power may be hampered or restricted to any extent by contracts previously made between individuals or corporations is inconceivable.

VI.

No ground for holding act void as being confiscatory or as taking property without due process of law.

In *Wilson* v. *New, supra*, the fact was mentioned that there was no claim that, in any view, the enforcement of the law would result in confiscation. That question is no more in the present case than it was in that case. True, there is an allegation that this railroad has not and will not for some years to come yield a fair return on the investment, and that, therefore, the added expense imposed will be confiscatory. But this is a mere conclusion of law

sought to be drawn from the facts alleged. Whether the conclusion is warranted must be determined from an examination of the allegations. From these, it does appear that the business of this railroad, as a whole, has during the past 10 years yielded an average annual net income of, in round numbers, only $62,000, or less than 1 per cent on the alleged value of the property, and that, in 1909, 1914, and 1916, there were actual deficits. (R. 8.) But the bill is specific in stating the causes of this lack of profits to be (1) the undeveloped condition of the country, (2) competition with other railroads, and (3) the low passenger rates fixed by the laws of Arkansas for local traffic. Can it be said that merely because the combined influence of these three things renders the business *as a whole* unremunerative, a regulatory act of Congress, which would, for a few months, burden the *interstate portion* of the business with an additional expense of $1,000 per month, is confiscatory? One vice in the suggestion is that the bill is entirely silent as to whether the interstate portion of the business is remunerative or not. For aught that appears, this part of the business may be highly remunerative. The act of Congress is a regulation of interstate commerce. If, in any view, such an act can be condemned as confiscatory, it must be because it imposes such heavy burdens as to prevent the carrier from earning a fair return from its *interstate business*. If that part of its business does yield such a return, the act can not be said to be confiscatory because it reduced the amount of profits on its entire business. The deter-

minative question is the effect on the *interstate* business and not the *entire* business. This rule has always been applied even in rate cases where the court was dealing with statutes and orders fixing the charges which carriers might make for services rendered. Thus, in *Smyth* v. *Ames*, 169 U. S. 466, 541, it was said:

> * * * In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The State can not justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits on its interstate business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State that the State can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclu-

> sively to what is just and reasonable, as between the carrier and the public, in respect of domestic business.

And this was reaffirmed in the *Minnesota Rate Cases*, 230 U. S. 352, 435.

Since, therefore, the bill contains no allegations as to either the income or the expenses incident to *interstate traffic*, there is no basis for a claim of confiscation and that question is not before the court.

But if it had been alleged that the interstate traffic itself did not yield a fair income, the case would not, in view of the other allegations of the bill, be made out. The Government does not guarantee to any carrier that its business will be profitable. It places upon the business such regulations as are necessary for the protection of the public. This being done, the law simply guarantees that the carrier shall be entitled to charge fair and reasonable compensation for services rendered, taking into consideration these regulations. If the carrier fails to get enough business to be profitable, or if competition with other railroads forces it to make its charges so low that there is no profit, the fault is not with the law. In this case, we have the distinct allegation that entering, with controlling influence, into the unfortunate result of this railroad's business are a lack of business, on account of the undeveloped country, and competition with other railroads, presumably necessitating unremunerative rates. Assuming that both will have an effect upon the interstate business, it can not be contended that a reason

is thus furnished for saying that a law, which has been held to be valid as applied to carriers generally, is confiscatory when applied to this railroad.

But it is a misapprehension of the law to say that the validity of this act can be made to depend upon the ability of a particular carrier to bear the additional expense and yet earn a fair return on its investment. Such an act does not belong with rate-fixing statutes, but rather with those laws establishing regulations without which Congress has decided that interstate railroad business can not be safely and properly and continuously conducted. While it is possible that such an act might be so unreasonable and arbitrary as to be void, it has never, we believe, been supposed that, if reasonable and valid as to railroads generally, it could be held void as to a particular railroad which happened not to have a profitable business. If such a railroad carries on its business at all, it must comply with the requirements which Congress has found necessary to lay down for the conduct of railroad business in general, although this may cost money. As said by the Chief Justice in *Wilson* v. *New, supra:*

> * * * Clear also is it that an obligation rests upon a carrier to carry on its business and that conditions of cost or other obstacles afford no excuse and exempt from no responsibility which arises from a failure to do so and also that government possesses the full regulatory power to compel performance of such duty. (pp. 349–350.)

This act was passed, in an emergency, to require the railroads to furnish service to the public. A clear distinction has been drawn by the courts between acts of this character and those dealing with the subject of rates. Speaking of this distinction, this court said in *Atlantic Coast Line* v. *North Carolina Corp. Comm.*, 206 U. S. 1, 26:

> * * * This is so because as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so as an incident some pecuniary loss from rendering such service may result. It follows, therefore, that the mere incurring of a loss from the performance of such a duty does not in and of itself necessarily give rise to the conclusion of unreasonableness, as would be the case where the whole scheme of rates was unreasonable under the doctrine of *Smyth* v. *Ames* * * *.

And this language was repeated with approval in *Missouri Pacific Ry. Co.* v. *Kansas*, 216 U. S. 262, 278.

The rule above stated has been applied to an order requiring the operation of an additional train, although such train could not be operated without a daily pecuniary loss (*Atlantic Coast Line* v. *North Carolina Corp. Comm.*, 206 U. S. 1); to an order requiring the running of a separate passenger train instead of a mixed freight and passenger train (*Missouri Pacific Ry. Co.* v. *Kansas*, 216 U. S. 262, 279); to the act of March 4, 1907 (34 Stat. 1415, c. 2939), regulating the hours of service of employees

(*Baltimore and Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612); to the act of March 2, 1893 (27 Stat. 531, c. 196), requiring automatic couplers (*Johnson* v. *Southern Pacific Co.*, 196 U. S. 1); to a State statute (the full-crew statute of Arkansas), requiring not less than a certain number for the crews of freight trains (*Chicago, Rock Island & Pacific Ry. Co.* v. *Arkansas*, 219 U. S. 453); to a State statute requiring a certain kind of headlights on locomotives (*Atlantic Coast Line* v. *Georgia*, 234 U. S. 280); to a State statute requiring the salaries and expenses of a railroad commission to be borne by the railroads within the State (*Charlotte, C. & A. R. R. Co.* v. *Gibbes*, 142 U. S. 386); to a State statute requiring coal to be measured for payment of miners' wages (*McLean* v. *Arkansas*, 211 U. S. 539); to the Federal employers' liability act (*Second Employers' Liability Cases*, 223 U. S. 1); and to a State statute requiring a vessel to take a pilot (*Cooley* v. *Board of Wardens*, 12 How. 298).

The acts thus sustained all required the expenditure of money. They applied alike to railroads which were yielding a fair income and those being operated at a loss. But, having been sustained as laws of general application, it has never been supposed that they could be denied applicability to a particular railroad because of their effect upon the net earnings of that railroad. They constitute a class of laws in which the legislative power has been exerted, for the protection of the public, to prescribe the conditions upon which it shall be lawful to con-

duct a given business, especially when that business is fraught with danger or is charged with a public service.

The act now involved is one which Congress found it necessary to apply to all interstate carriers in order to prevent the total obstruction of interstate commerce—that is, to require the carriers to furnish adequate facilities, or even any facilities at all, to the public. And having been held to be a valid law of general application, no carrier can escape it merely because rendering the required service will entail loss.

The claim that the compulsory raising of wages is a taking of the railroad's property and applying it to the private use of its employees, and, therefore, a taking without due process of law, is answered by Mr. Justice Holmes in *Noble State Bank* v. *Haskell*, 219 U. S. 104, 110, 111. In that case the statute of Oklahoma levying an assessment upon each State bank to create a fund for the protection of the depositors of all such banks was challenged upon the ground that it took the money of one bank and applied it to the private use of the creditors of other banks, and hence was a taking without due process of law. But it was said:

> In answering that question we must be cautious about pressing the broad words of the Fourteenth Amendment to a drily logical extreme. Many laws which it would be vain to ask the court to overthrow could be shown, easily enough, to transgress a scholastic interpretation of one or another of the great guar-

> antees in the Bill of Rights. They more or less limit the liberty of the individual or they diminish property to a certain extent. We have few scientifically certain criteria of legislation, and as it often is difficult to mark the line where what is called the police power of the States is limited by the Constitution of the United States, judges should be slow to read into the latter a *nolumus mutare* as against the lawmaking power. (p. 110.)

And, viewing the act in the light of this statement, it was further said:

> * * * In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. *Clark* v. *Nash*, 198 U. S. 361; *Strickley* v. *Highland Boy Mining Co.*, 200 U. S. 527, 531; *Offield* v. *New York, New Haven & Hartford R. R. Co.*, 203 U. S. 372; *Bacon* v. *Walker*, 204 U. S. 311, 315. And in the next, it would seem that there may be other cases beside the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. See *Ohio Oil Co.* v. *Indiana*, 177 U. S. 190. At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said. (pp. 110–111.)

Here, the "ulterior public advantage" was the making possible interstate commerce necessary to all

the people, and if it can be said that there was, incidentally, a taking, in any sense, of this carrier's property and applying it to the private use of its employees, such taking was insignificant. Moreover, the act was a measure of mutual protection to the public and the carriers. It was necessary to prevent a total suspension of business and cessation of revenue, entailing ruinous loss. Nor would even a railroad whose men might not strike be exempt from this loss. Interstate commerce so ties the railroads of the country together in interest that they are, in a very large measure, dependent upon each other. Scarcely any railroad could live if it was dependent wholly on traffic between points on its own line. Hence, if there had been a general strike, but the employees of this particular carrier had remained in its service, it would have been cut off from its interchange of business with other carriers. In comparison with the compensating advantage of being saved from this loss of business and revenue, the added burden of expense is truly insignificant.

It is respectfully submitted that there is no error in the decree of the district court, and it should be affirmed.

WILLIAM L. FRIERSON,
Assistant Attorney General.

ALEX KOPLIN,
S. MILTON SIMPSON,
Attorneys.

NOVEMBER, 1917.

○

FORT SMITH & WESTERN RAILROAD COMPANY ET AL. *v.* MILLS, RECEIVER OF FORT SMITH & WESTERN RAILROAD COMPANY, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS.

No. 42. Argued December 13, 1917.—Decided June 1, 1920.

The Act of September 3, 5, 1916, known as the Adamson Law, although by its general terms purporting to apply to all railroads and railroad employees subject to the Act to Regulate Commerce, was not intended to govern the exceptional case of an insolvent railroad operating at a loss under an agreement with its men, which they desired to keep, allowing them less wages than the act prescribed. *Wilson* v. *New*, 243 U. S. 332, considered.
Reversed.

THE case is stated in the opinion.

Mr. A. C. Dustin, with whom *Mr. James B. McDonough* was on the brief, for appellants.

Mr. Assistant Attorney General Frierson, with whom *Mr. Alex. Koplin* and *Mr. S. Milton Simpson* were on the brief, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill of equity brought by the Fort Smith and Western Railroad Company and the trustee of a mortgage given to secure bonds of that road, to enjoin the receiver of the road from conforming to the Act of September 3, 5, 1916, c. 436, 39 Stat. 721, in respect of hours of service and wages, and to enjoin the District Attorney of the United States from proceeding to enforce the act. The bill alleges

that the physical property is worth over $7,000,000, but that no dividends ever have been paid upon the stock, that no interest has been paid upon the bonds since October 1, 1907, and that there is a yearly deficit in the earnings of the road. The receiver was appointed in proceedings to foreclose the mortgage. The bill further alleges that the railroad now (1917) is being carried on under an agreement with the men which the men desire to keep, but that the receiver, yielding to the threats of the District Attorney to prosecute him unless he does so, purposes to substitute the much more onerous terms of the act. It is set up that the act if construed to apply to this case is void under the Fifth Amendment to the Constitution. The bill was dismissed by the District Court, on motion, for want of equity, and the plaintiffs appealed.

The act in question, known as the Adamson Law, was passed to meet the emergency created by the threat of a general railroad strike. It fixed eight hours as a day's work and provided that for some months, pending an investigation, the compensation of employees of railroads subject to the Act to Regulate Commerce should not be "reduced below the present standard day's wage," and that time in excess of eight hours should be paid for pro rata at the same rate. The time has expired long since but the rights of the parties require a decision of the case.

In *Wilson* v. *New*, 243 U. S. 332, it was decided that the act was within the constitutional power of Congress to regulate commerce among the States; that since, by virtue of the organic interdependence of different parts of the Union, not only comfort but life would be endangered on a large scale if interstate railroad traffic suddenly stopped, Congress could meet the danger of such a stoppage by legislation, and that, in view of the public interest, the mere fact that it required an expenditure to tide the country over the trouble would not of itself alone show a taking of property without due process of law. It was

held that these principles applied no less when the emergency was caused by the combined action of men than when it was due to a catastrophe of nature; and that the expenditure required was not necessarily unconstitutional because it took the form of requiring the railroads to pay more, as it might have required the men to take less, during the short time necessary for an investigation ordered by the law.

But the bill in *Wilson* v. *New* raised only the general objections to the act that were common to every railroad. In that case it was not necessary to consider to what extremes the law might be carried or what were its constitutional limits. It was not decided, for instance, that Congress could or did require a railroad to continue in business at a loss. See *Brooks-Scanlan Co.* v. *Railroad Commission of Louisiana*, 251 U. S. 396. It was not decided that there might not be circumstances to which the act could not be applied consistently with the Fifth Amendment, or that the act in spite of its universal language must be construed to reach literally every carrier by railroad subject to the Act to Regulate Commerce. It is true that the first section of the statute purports to apply to any such carrier, and the third to the compensation of railway employees subject to this act. But the statute avowedly was enacted in haste to meet an emergency, and the general language necessary to satisfy the demands of the men need not be taken to go further than the emergency required or to have been intended to make trouble rather than to allay it. We cannot suppose that it was meant to forbid work being done at a less price than the rates laid down, when both parties to the bargain wished to go on as before and when the circumstances of the road were so exceptional that the lower compensation accepted would not affect the market for labor upon other roads.

But that is the present case. An insolvent road had succeeded in making satisfactory terms with its men,

enabling it to go on, barely paying its way, if it did so, not without impairing even the mortgage security, not to speak of its capital. We must accept the allegations of the bill and must assume that the men were not merely negatively refraining from demands under the act but, presumably appreciating the situation, desired to keep on as they were. To break up such a bargain would be at least unjust and impolitic and not at all within the ends that the Adamson Law had in view. We think it reasonable to assume that the circumstances in which, and the purposes for which the law was passed import an exception in a case like this.

Decree reversed.

MR. JUSTICE DAY, MR. JUSTICE VAN DEVANTER, MR. JUSTICE PITNEY and MR. JUSTICE MCREYNOLDS agree with this decision limiting the effect of the Adamson Law as stated, but adhere to the views concerning the constitutionality of the act expressed by them in *Wilson* v. *New.*